

Enrolled House Bill 2101

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)

CHAPTER

AN ACT

Relating to fees of Water Resources Department; creating new provisions; amending ORS 536.050, 537.150 and 537.620; and declaring an emergency.

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

SECTION 1. ORS 536.050 is amended to read:

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

(a) For examining an application for a permit:

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

(i) A base fee of [~~\$300~~] **\$500 for an appropriation of water through a single use, point of diversion or point of appropriation;**

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

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

[and]

(iv) **\$200 for each additional use, point of diversion or point of appropriation included in the application; and**

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

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

(i) A base fee of [~~\$300~~] **\$500;** and

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

(C) To exclusively appropriate stored water:

(i) A base fee of [~~\$150~~] **\$250;** and

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

(b) For recording a permit to appropriate or store water, [~~\$250~~] **\$300.**

(c) For filing [~~or~~] **and** recording [*any other water right instrument, \$25 for the first page and \$5 for each additional page*] **the assignment or partial assignment of a water right application, permit or license under ORS 537.220 or 537.635, \$50.**

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

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

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

- (g) For a computer-generated map, the actual cost of the work.
- (h) For examining an application for approval of a change to an existing water right or permit:
 - (A) A base fee of [~~\$350~~] **\$400 for a change to a single water right or permit;**
 - (B) [~~\$350~~] **\$400** for each additional type of change requested; [*and*]
- (C) For a request for a change in place of use or type of use or for a water exchange under ORS 540.533, [~~\$175~~] **\$200** for each second-foot or fraction thereof requested beyond the first second-foot; **and**
 - (D) **\$200 for each additional water right or permit included in the application.**
- (i) For examining an application for a temporary change in place of use under ORS 540.523, for a temporary transfer under ORS 540.585 or for a temporary change in place of use, a change in the point of diversion to allow for the appropriation of ground water or a change of a primary right to a supplemental right under ORS 540.570, a base fee of [~~\$175~~] **\$200 for the first water right or permit, plus \$50 for each additional water right or permit included in the application and:**
 - (A) For nonirrigation uses, [~~\$75~~] **\$80** for each second-foot or fraction thereof requested beyond the first second-foot; or
 - (B) For irrigation uses, \$1 per acre of land irrigated or, if the application and required map are submitted to the department in a department-approved digital format, 25 cents per acre of land irrigated.
- (j) For submitting a protest to the department, [~~\$250~~] **\$350.**
- (k) For filing an application for extension of time within which irrigation or other works shall be completed or a water right perfected, [~~\$250~~] **\$350.**
- (L) For a limited license under ORS 537.143 or 537.534 (2), the fee established by rule by the Water Resources Commission.
- (m) For filing, examining and certifying a petition under ORS 541.329, \$250 plus 10 cents per acre of water involved in the application. For purposes of computing this fee, when any acreage within a quarter quarter of a section is involved, the 10 cents per acre shall apply to all acres in that quarter quarter of a section. Notwithstanding the fee amount established in this paragraph, a district notifying the department under ORS 541.327 (4) shall pay the actual cost of filing, examining and certifying the petition.
- (n) For requesting standing under ORS 537.153, 537.621 or 543A.120, [~~\$50~~] **\$100.**
- (o) For participating in a contested case proceeding under ORS 537.170, 537.622 or 543A.130, [~~\$200~~] **\$250.**
- (p) Except for an applicant, for obtaining a copy of both a proposed final order and a final order for a water right application under ORS 537.140 to 537.252, 537.505 to 537.795 or 543A.005 to 543A.300 **or an extension issued under ORS 537.230, 537.248 or 537.630, \$10.**
- (q) For examining an application to store water under ORS 537.409:
 - (A) A base fee of [~~\$40~~] **\$80;** and
 - (B) [~~\$10~~] **\$20** for each acre-foot or fraction thereof[, *not to exceed a total of \$250*].
- (r) For submitting a notice of intent under ORS 543A.030 or 543A.075, the amount established by the Water Resources Director under ORS 543A.410.
- (s) For examining an application for a substitution made under ORS 540.524, [~~\$250~~] **\$280.**
- (t) For examining an application for an allocation of conserved water under ORS 537.455 to 537.500, \$700.
- (u) For submitting a water management and conservation plan pursuant to rules of the Water Resources Commission:
 - (A) \$250, if the plan is submitted by an agricultural water supplier;
 - (B) \$500, if the plan is submitted by a municipal water supplier serving a population of 1,000 or fewer persons; or
 - (C) \$1,000, if the plan is submitted by a municipal water supplier serving a population of more than 1,000 persons.
- (v) For examining a new application for an in-stream water right lease under ORS 537.348:

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

(B) \$100 for all other applications.

(w) For examining an application for an in-stream water right lease renewal, \$50.

(2) Notwithstanding the fees established under subsection (1) of this section, the Water Resources Commission may establish lower examination and permit fees by rule for:

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

(b) The right to appropriate water for the purpose of allowing the applicant to water livestock outside of a riparian area, as that term is defined in ORS 541.351.

(3) The Water Resources Director may refund all or part of a fee paid to the department under this section if the director determines that a refund of the fee is appropriate in the interests of fairness to the public or necessary to correct an error of the department.

(4) The director may waive all or part of a fee for a change to a water right permit under ORS 537.211 (4), a change to a water right subject to transfer under ORS 540.520 or 540.523 or an allocation of conserved water under ORS 537.470, if the change or allocation of conserved water is:

(a) Made pursuant to ORS 537.348;

(b) Necessary to complete a project funded under ORS 541.375; or

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

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

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

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

SECTION 2. ORS 537.150 is amended to read:

537.150. (1) Within 15 days after receiving an application, the Water Resources Department shall determine whether the application contains the information listed under ORS 537.140 (1) and is complete and not defective, including the payment of all fees required under ORS 537.140 (5). If the department determines that the application is incomplete or defective or that **not** all fees have [*not*] been paid, the department shall return [*all*] **the fees paid** and the application.

(2) Upon determining that an application contains the information listed under ORS 537.140 (1) and is complete and not defective, the department shall indorse on the application the date upon which the application was received at the department, which shall be the priority date for any water right issued in response to the application. All applications that comply with the provisions of law shall be recorded in a suitable book kept for that purpose.

(3) If an application is complete and not defective, the department shall determine whether the proposed use is prohibited by ORS chapter 538. If the proposed use is prohibited by ORS chapter 538, the department shall reject the application and return all fees to the applicant with an explanation of the statutory prohibition.

(4) If the proposed use is not prohibited by ORS chapter 538, the department shall undertake an initial review of the application and make a preliminary determination of:

(a) Whether the proposed use is restricted or limited by statute or rule;

(b) The extent to which water is available from the proposed source during the times and in the amounts requested; and

(c) Any other issue the department identifies as a result of the initial review that may preclude approval of or restrict the proposed use.

(5) Upon completion of the initial review and no later than 30 days after determining an application to be complete and not defective as described in subsection (1) of this section, the department shall notify the applicant of its preliminary determinations and allow the applicant 14 days from the

date of mailing within which to notify the department to stop processing the application or to proceed with the application. If the applicant notifies the department to stop processing the application, the department shall return the application and [all except \$50 of] all fees **paid in excess of \$150**. If the department receives no timely response from the applicant, the department shall proceed with the application.

(6) Within seven days after proceeding with the application under subsection (5) of this section, the department shall give public notice of the application in the weekly notice published by the department. The notice shall include a request for comments on the application and information pertaining to how an interested person may obtain future notices about the application and a copy of the proposed final order.

(7) Within 30 days after the public notice under subsection (6) of this section, any person interested in the application shall submit written comments to the department. Any person who asks to receive a copy of the department's proposed final order shall submit to the department the fee required under ORS 536.050 (1).

SECTION 3. ORS 537.620 is amended to read:

537.620. (1) The Water Resources Department shall accept all applications for permits submitted under ORS 537.615 in proper form.

(2) Within 15 days after receiving the application, the department shall determine whether the application contains the information listed under ORS 537.615 (2) and is complete and not defective, including the payment of all fees required under ORS 537.615 (5). If the department determines that the application is incomplete or defective or that **not** all fees have [not] been paid, the department shall return [all] **the fees paid** and the application to the applicant to remedy the defect. If an application is complete and not defective, the department shall indorse on the application the date upon which the application was received at the department, which shall be the priority date for any water right issued in response to the application.

(3) Upon determining that an application is complete and not defective, the department shall determine whether the proposed use is prohibited by statute. If the proposed use is prohibited by statute, the department shall reject the application and return all fees to the applicant with an explanation of the statutory prohibition.

(4) If the proposed use is not prohibited by statute, the department shall undertake an initial review of the application and make a preliminary determination of:

(a) Whether the proposed use is restricted or limited by statute or rule or because the proposed use is located within a designated critical ground water area;

(b) The extent to which water is available from the proposed source during the times and in the amounts requested; and

(c) Any other issue the department identifies as a result of the initial review that may preclude approval of or restrict the proposed use.

(5) Upon completion of the initial review and no later than 30 days after determining an application to be complete and not defective as described in subsection (2) of this section, the department shall notify the applicant of its preliminary determinations and allow the applicant 14 days from the date of mailing within which to notify the department to stop processing the application or to proceed with the application. If the applicant notifies the department to stop processing the application, the department shall return the application and [all except \$50 of] all fees **paid in excess of \$150**. If the department receives no timely response from the applicant, the department shall proceed with the application.

(6) Within seven days after proceeding with the application under subsection (5) of this section, the department shall give public notice of the application in the weekly notice published by the department. The notice shall include a request for comments on the application and information pertaining to how an interested person may obtain future notices about the application and a copy of the proposed final order.

(7) Within 30 days after the public notice under subsection (6) of this section, any person interested in the application shall submit written comments to the department. Any person who asks

to receive a copy of the department's proposed final order shall submit to the department the fee required under ORS 536.050 (1)(p).

SECTION 4. (1) The amendments to ORS 536.050 by section 1 of this 2007 Act apply only to fees collected on or after the first day of the calendar month following the effective date of this 2007 Act.

(2) The amendments to ORS 537.150 by section 2 of this 2007 Act apply only to applications submitted on or after the first day of the calendar month following the effective date of this 2007 Act.

(3) The amendments to ORS 537.620 by section 3 of this 2007 Act apply only to applications submitted on or after the first day of the calendar month following the effective date of this 2007 Act.

SECTION 5. This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect on its passage.

Passed by House April 18, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate May 4, 2007

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President of Senate

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State