

## SENATE AMENDMENTS TO A-ENGROSSED SENATE BILL 788

By JOINT COMMITTEE ON WAYS AND MEANS

June 26

1 On page 1 of the printed A-engrossed bill, line 2, delete “537.545 and 540.045” and insert  
2 “536.050, 536.900, 537.150, 537.153, 537.545, 537.610, 537.620, 537.621, 537.785 and 540.045”.

3 Delete lines 5 through 22 and delete pages 2 and 3 and insert:

4 “**SECTION 1.** ORS 537.545 is amended to read:

5 “537.545. (1) No registration, certificate of registration, application for a permit, permit, certif-  
6 icate of completion or ground water right certificate under ORS 537.505 to 537.795 and 537.992 is  
7 required for the use of ground water for:

8 “(a) Stockwatering purposes;

9 “(b) Watering any lawn or noncommercial garden not exceeding one-half acre in area;

10 “(c) Watering the lawns, grounds and fields not exceeding 10 acres in area of schools located  
11 within a critical ground water area established pursuant to ORS 537.730 to 537.740;

12 “(d) Single or group domestic purposes in an amount not exceeding 15,000 gallons a day;

13 “(e) Down-hole heat exchange purposes;

14 “(f) Any single industrial or commercial purpose in an amount not exceeding 5,000 gallons a day;

15 or

16 “(g) Land application, so long as the ground water:

17 “(A) Has first been appropriated and used under a permit or certificate issued under ORS  
18 537.625 or 537.630 for a water right issued for industrial purposes or a water right authorizing use  
19 of water for confined animal feeding purposes;

20 “(B) Is reused for irrigation purposes and the period of irrigation is a period during which the  
21 reused water has never been discharged to the waters of the state; and

22 “(C) Is applied pursuant to a permit issued by the Department of Environmental Quality or the  
23 State Department of Agriculture under either ORS 468B.050 to construct and operate a disposal  
24 system or ORS 468B.215 to operate a confined animal feeding operation.

25 “(2) [*The use of*] **A** ground water [*for a*] use **for a purpose that is** exempt under subsection (1)  
26 of this section, to the extent that [*it*] **the use** is beneficial, constitutes a right to appropriate ground  
27 water equal to that established by a ground water right certificate issued under ORS 537.700.

28 “(3) Except for the use of water under subsection (1)(g) of this section, the Water Resources  
29 Commission by rule may require any person or public agency using ground water for any such  
30 purpose to furnish information with regard to such ground water and the use thereof. For a use of  
31 water described in subsection (1)(g) of this section, the Department of Environmental Quality or the  
32 State Department of Agriculture shall provide to the Water Resources Department a copy of the  
33 permit issued under ORS 468B.050 or 468B.215 authorizing the land application of ground water for  
34 reuse. The permit shall provide the information regarding the place of use of such water and the  
35 nature of the beneficial reuse.

1           “[(3)] (4) If it is necessary for the Water Resources Department to regulate the use or distrib-  
2           ution of ground water, including uses **for purposes that are** exempt under subsection (1) of this  
3           section, the department shall use as a priority date for the exempt uses the date indicated in the log  
4           for the well filed with the department under ORS 537.765 or other documentation provided by the  
5           well owner showing when water use began.

6           “(5) **The owner of land on which a well is drilled to allow ground water use for a purpose**  
7           **that is exempt under subsection (1) of this section shall provide the Water Resources De-**  
8           **partment with a map showing the exact location of the well on the tax lot. The landowner**  
9           **shall provide a map required by this subsection to the department no later than 30 days after**  
10           **the well is completed. The map must be prepared in accordance with standards established**  
11           **by the department.**

12           “(6) **The owner of land on which a well described in subsection (5) of this section is lo-**  
13           **cated shall file the exempt ground water use with the Water Resources Department for re-**  
14           **recording. The filing must be accompanied by the fee described in subsection (7) of this section.**  
15           **The filing must be received by the department no later than 30 days after the well is com-**  
16           **pleted.**

17           “(7) **The Water Resources Department shall collect a fee of \$300 for recording an exempt**  
18           **ground water use under subsection (6) of this section. Moneys from fees collected under this**  
19           **subsection shall be deposited to the credit of the Water Resources Department Water Right**  
20           **Operating Fund. Notwithstanding ORS 536.009, moneys deposited to the fund under this**  
21           **subsection shall be used for the purposes of evaluating ground water supplies, conducting**  
22           **ground water studies, carrying out ground water monitoring, processing ground water data**  
23           **and the administration and enforcement of this subsection and subsections (3), (5), (6) and**  
24           **(8) of this section.**

25           “(8) **The Water Resources Commission shall adopt rules to implement, administer and**  
26           **enforce subsections (5) to (7) of this section.**

27           “**SECTION 2.** ORS 536.900 is amended to read:

28           “536.900. (1) In addition to any other liability or penalty provided by law, the Water Resources  
29           Commission may impose a civil penalty on a person for any of the following:

30           “(a) Violation of any of the terms or conditions of a permit, certificate or license issued under  
31           ORS chapters 536 to 543A.

32           “(b) Violation of ORS 537.130 or 537.535.

33           “(c) **Violation of ORS 537.545 (5) or (6) or of a rule described in ORS 537.545 (8).**

34           “[(c)] (d) Violation of any rule or order of the Water Resources Commission that pertains to well  
35           maintenance.

36           “[(d)] (e) Violation of ORS 540.045, 540.145, 540.210, 540.310, 540.320, 540.330, 540.340, 540.435,  
37           540.440, 540.570 (5), 540.710, 540.720 and 540.730 or rules adopted under ORS 540.145.

38           “(2) A civil penalty may be imposed under this section for each day of violation of ORS 537.130,  
39           537.535, 540.045, 540.310, 540.330, 540.570 (5), 540.710, 540.720 or 540.730.

40           “(3) In the event the petitioner knowingly misrepresents the map and petition required in ORS  
41           541.329, the commission may assess a penalty of up to \$1,000 based upon guidelines to be established  
42           by the commission. In addition, the petition and map shall be amended to correct the error at the  
43           petitioner’s cost. Affected users shall be given notice as provided in ORS 541.329 (5).

44           “(4) A civil penalty may not be imposed until the commission prescribes a reasonable time to  
45           eliminate the violation. The commission shall notify the violator of the time allowed to correct a

1 violation within five days after the commission first becomes aware of the violation.

2 “(5) Notwithstanding any term or condition of a permit, certificate or license, the rotation of the  
3 use of water under ORS 540.150 may not be considered a violation under subsection (1) of this sec-  
4 tion.

5 “**SECTION 3.** ORS 540.045 is amended to read:

6 “540.045. (1) Each watermaster shall:

7 “(a) Regulate the distribution of water among the various users of water from any natural sur-  
8 face or ground water supply in accordance with the users’ existing water rights of record in the  
9 Water Resources Department.

10 “(b) Upon the request of the users, distribute water among the various users under any part-  
11 nership ditch, pipeline or well or from any reservoir, in accordance with the users’ existing water  
12 rights of record in the department.

13 “(c) Divide the waters of the natural surface and ground water sources and other sources of  
14 water supply among the canals, ditches, pumps, pipelines and reservoirs taking water from the  
15 source for beneficial use, by regulating, adjusting and fastening the headgates, valves or other con-  
16 trol works at the several points of diversion of surface water or the several points of appropriation  
17 of ground water, according to the users’ relative entitlements to water.

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

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

23 “(2) When a watermaster must rely on a well log or other documentation to regulate the use  
24 or distribution of ground water, the regulation shall be in accordance with ORS 537.545 [(3)] (4).

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

29 “(4) As used in this section, ‘existing water rights of record’ includes all completed permits,  
30 certificates, licenses and ground water registration statements filed under ORS 537.605 and related  
31 court decrees.

32 “**SECTION 4. The amendments to ORS 537.545 by section 1 of this 2009 Act apply to a  
33 well completed on or after the effective date of this 2009 Act.**

34 “**SECTION 5.** ORS 536.050 is amended to read:

35 “536.050. (1) The Water Resources Department may collect the following fees in advance:

36 “(a) For examining an application for a permit:

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

39 “(i) A base fee of [ \$500 ] **\$700** for an appropriation of water through a single use, point of di-  
40 version or point of appropriation;

41 “(ii) [ \$200 ] **\$250** for the first second-foot or fraction thereof appropriated under the permit;

42 “(iii) [ \$100 ] **\$250** for each additional second-foot or fraction thereof appropriated under the per-  
43 mit;

44 “(iv) [ \$200 ] **\$250** for each additional use, point of diversion or point of appropriation included in  
45 the application; [and]

1 “(v) If appropriating stored water, [\\$20] **\$25** for the first acre-foot or fraction thereof up to 20  
2 acre-feet, plus \$1 for each additional acre-foot or fraction thereof[.]; **and**

3 **“(vi) If appropriating ground water, in addition to any other fees, \$300 for each applica-  
4 tion filed.**

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

6 “(i) A base fee of [\\$500] **\$700**; [and]

7 “(ii) [\\$20] **\$25** for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1 for each ad-  
8 ditional acre-foot or fraction thereof[.]; **and**

9 **“(iii) \$100 for each additional storage location.**

10 “(C) To exclusively appropriate stored water:

11 “(i) A base fee of [\\$250] **\$400**; and

12 “(ii) [\\$15] **\$25** for the first acre-foot or fraction thereof up to [10] **20** acre-feet, plus \$1 for each  
13 additional acre-foot or fraction thereof.

14 “(b) For [recording] a permit **issued under ORS 537.147, 537.211, 537.409 or 537.625** to appro-  
15 priate or store water[, \$300.]:

16 **“(A) A base fee of \$400 for recording the permit; and**

17 **“(B) An additional fee of \$500 if the permit is issued pursuant to a final order that con-  
18 tains provisions requested by the applicant for mitigating impacts to the proposed water  
19 source.**

20 “(c) For filing and recording the assignment or partial assignment of a water right application,  
21 permit or license under ORS 537.220 or 537.635, [\\$50] **\$75**.

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

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

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

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

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

28 “(A) A base fee of [\\$400] **\$900** for a change to a single water right or permit;

29 “(B) [\\$400] **\$700** for each additional type of change requested;

30 “(C) For a request for a change in place of use or type of use or for a water exchange under  
31 ORS 540.533, [\\$200] **\$250** for each second-foot or fraction thereof requested beyond the first second-  
32 foot; [and]

33 “(D) [\\$200] **\$400** for each additional water right or permit included in the application[.]; **and**

34 **“(E) An additional fee of \$300 per application, if the application is for an additional point  
35 of appropriation, a change in a point of appropriation or a change from surface water to  
36 ground water or for substitution as described in ORS 540.524.**

37 “(i) For examining an application for a temporary change in place of use under ORS 540.523, for  
38 a temporary transfer under ORS 540.585 or for a temporary change in place of use, a change in the  
39 point of diversion to allow for the appropriation of ground water or a change of a primary right to  
40 a supplemental right under ORS 540.570, a base fee of [\\$200] **\$600** for the first water right or permit,  
41 plus [\\$50] **\$200** for each additional water right or permit included in the application and:

42 “(A) For nonirrigation uses, [\\$80] **\$150** for each second-foot or fraction thereof requested beyond  
43 the first second-foot; or

44 “(B) For irrigation uses, [\\$1] **\$2** per acre of land irrigated or, if the application and required  
45 map are submitted to the department in a department-approved digital format, [25] **50** cents per acre

1 of land irrigated.

2 “(j) For submitting a protest to the department[, \$350]:

3 **“(A) \$600 if the protest is by a nonapplicant; and**

4 **“(B) \$300 if the protest is by an applicant.**

5 “(k) For filing an application for extension of time within which irrigation or other works shall  
6 be completed or a water right perfected, [\$350] **\$500.**

7 “(L) For a limited license under ORS 537.143 or 537.534 (2), the fee established by rule by the  
8 Water Resources Commission.

9 “(m) For filing, examining and certifying a petition under ORS 541.329, [\$250] **\$300** plus 10 cents  
10 per acre of water involved in the application. For purposes of computing this fee, when any acreage  
11 within a quarter quarter of a section is involved, the 10 cents per acre shall apply to all acres in  
12 that quarter quarter of a section. Notwithstanding the fee amount established in this paragraph, a  
13 district notifying the department under ORS 541.327 (4) shall pay the actual cost of filing, examining  
14 and certifying the petition.

15 “(n) For requesting standing under ORS 537.153, 537.621 or 543A.120, [\$100] **\$150.**

16 “(o) For participating in a contested case proceeding under ORS 537.170, 537.622 or 543A.130,  
17 [\$250] **\$350.**

18 “(p) Except for an applicant, for obtaining a copy of both a proposed final order and a final or-  
19 der for a water right application under ORS 537.140 to 537.252, 537.505 to 537.795 or 543A.005 to  
20 543A.300 or an extension issued under ORS 537.230, 537.248 or 537.630, [\$10] **\$20.**

21 “(q) For examining an application to store water under ORS 537.409:

22 “(A) A base fee of [\$80] **\$300**; and

23 “(B) [\$20] **\$25** for each acre-foot or fraction thereof.

24 “(r) For submitting a notice of intent under ORS 543A.030 or 543A.075, the amount established  
25 by the Water Resources Director under ORS 543A.410.

26 “(s) For examining an application for a substitution made under ORS 540.524[, \$280.]:

27 **“(A) A base fee of \$630 for the first well substitution; and**

28 **“(B) A fee of \$300 for each additional well substitution.**

29 “(t) For examining an application for an allocation of conserved water under ORS 537.455 to  
30 537.500[, \$700.]:

31 **“(A) A base fee of \$850 for the first water right that is part of the allocation; and**

32 **“(B) An additional fee of \$300 for each water right that is part of the allocation beyond**  
33 **the first water right.**

34 “(u) For submitting a water management and conservation plan pursuant to rules of the com-  
35 mission:

36 “(A) [\$250] **\$400**, if the plan is submitted by an agricultural water supplier;

37 “(B) [\$500] **\$800**, if the plan is submitted by a municipal water supplier serving a population of  
38 1,000 or fewer persons; or

39 “(C) [\$1,000] **\$1,600**, if the plan is submitted by a municipal water supplier serving a population  
40 of more than 1,000 persons.

41 “(v) For examining a new application for an in-stream water right lease under ORS 537.348:

42 “(A) [\$200] **\$400** for an application for a lease with four or more landowners or four or more  
43 water rights; or

44 “(B) [\$100] **\$250** for all other applications.

45 “(w) For examining an application for an in-stream water right lease renewal, [\$50] **\$100.**

1       “(x) For submitting a claim of beneficial use under a permit having a priority date of July  
2 9, 1987, or later, \$150.

3       “(y) For submitting a request no later than 60 days after cancellation of a permit under  
4 ORS 537.260 to reinstate the permit, \$400.

5       “(z) For submitting a request for a basin program exception under ORS 536.295, \$500.

6       “(2)(a) The department may charge a dam owner an annual fee based upon the dam’s  
7 hazard rating as determined by the department. The fees the department may charge the  
8 dam owner are:

9       “(A) \$75 for a dam with a low hazard rating.

10       “(B) \$150 for a dam with a significant hazard rating.

11       “(C) \$500 for a dam with a high hazard rating.

12       “(D) If the dam owner fails to pay an annual fee on or before six months after the billing  
13 date, a late fee of \$100.

14       “(b) If a dam owner fails to pay an annual fee or a late fee charged by the department,  
15 the department may, after giving the dam owner notice by certified mail, place a lien on the  
16 real property where the dam is located for the fees owed by the dam owner.

17       “[(2)] (3) Notwithstanding the fees established under subsection (1) of this section, the commis-  
18 sion may establish lower examination and permit fees by rule for:

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

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

22       “[(3)(a)] (4)(a) The director may refund all or part of a fee paid to the department under this  
23 section if the director determines that a refund of the fee is appropriate in the interests of fairness  
24 to the public or necessary to correct an error of the department.

25       “(b) The director may refund all or part of the protest fee described in subsection (1)(j) of this  
26 section to the legal owner or occupant who filed a protest under ORS 540.641 if an order of the  
27 Water Resources Commission establishes that all or part of a water right has not been canceled or  
28 modified under ORS 540.610 to 540.650.

29       “[(4)] (5) The director may waive all or part of a fee for a change to a water right permit under  
30 ORS 537.211 (4), a change to a water right subject to transfer under ORS 540.520 or 540.523 or an  
31 allocation of conserved water under ORS 537.470, if the change or allocation of conserved water is:

32       “(a) Made pursuant to ORS 537.348;

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

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

36       “[(5)] (6) Notwithstanding the fees established pursuant to this section, the commission may  
37 adopt by rule reduced fees for persons submitting materials to the department in a digital format  
38 approved by the department.

39       “[(6)] (7) All moneys received under this section, less any amounts refunded under subsection  
40 [(3)] (4) of this section, shall be deposited in the Water Resources Department Water Right Operat-  
41 ing Fund.

42       “[(7)] (8) Notwithstanding subsection [(6)] (7) of this section, all fees received by the department  
43 for power purposes under ORS 543.280 shall be deposited in the Water Resources Department Hy-  
44 droelectric Fund established by ORS 536.015.

45       “**SECTION 6.** ORS 537.150 is amended to read:

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

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

11 “(3) If an application is complete and not defective, the department shall determine whether the  
12 proposed use is prohibited by ORS chapter 538. If the proposed use is prohibited by ORS chapter  
13 538, the department shall reject the application and return all fees to the applicant with an expla-  
14 nation of the statutory prohibition.

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

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

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

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

22 “(5) Upon completion of the initial review and no later than 30 days after determining an ap-  
23 plication to be complete and not defective as described in subsection (1) of this section, the depart-  
24 ment shall notify the applicant of its preliminary determinations and allow the applicant 14 days  
25 from the date of mailing within which to notify the department to stop processing the application  
26 or to proceed with the application. If the applicant notifies the department to stop processing the  
27 application, the department shall return the application and all fees paid in excess of [~~\$150~~] **\$200**.  
28 If the department receives no timely response from the applicant, the department shall proceed with  
29 the application.

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

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

39 “**SECTION 7.** ORS 537.153 is amended to read:

40 “537.153. (1) Within 60 days after the Water Resources Department proceeds with the applica-  
41 tion under ORS 537.150 (5), the department shall complete application review and issue a proposed  
42 final order approving or denying the application or approving the application with modifications or  
43 conditions. The department may request the applicant to provide additional information needed to  
44 complete the review. If the department requests additional information, the request shall be specific  
45 and shall be sent to the applicant by registered mail. The department shall specify a date by which

1 the information must be returned, which shall be not less than 10 days after the department mails  
2 the request to the applicant. If the department does not receive the information or a request for a  
3 time extension under ORS 537.175 by the date specified in the request, the department may reject  
4 the application and may refund fees in accordance with ORS 536.050 [(3)(a)] **(4)(a)**. The time period  
5 specified by the department in a request for additional information shall allow the department to  
6 comply with the 60-day time limit established by this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 “(6) Any person may submit a protest against a proposed final order. A protest shall be in

1 writing and shall include:

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

3 “(b) A description of the protestant’s interest in the proposed final order and, if the protestant  
4 claims to represent the public interest, a precise statement of the public interest represented;

5 “(c) A detailed description of how the action proposed in the proposed final order would impair  
6 or be detrimental to the protestant’s interest;

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

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

10 “(f) [*For persons other than the applicant,*] The protest fee required under ORS 536.050.

11 “(7) Requests for standing and protests on the proposed final order shall be submitted within 45  
12 days after publication of the notice of the proposed final order in the weekly notice published by the  
13 department. Any person who asks to receive a copy of the department’s final order shall submit to  
14 the department the fee required under ORS 536.050 (1)(p), unless the person has previously requested  
15 copies and paid the required fee under ORS 537.150 (7), the person is a protestant and has paid the  
16 fee required under ORS 536.050 (1)(j) or the person has standing and has paid the fee under ORS  
17 536.050 (1)(n).

18 “(8) Within 60 days after the close of the period for receiving protests, the Water Resources  
19 Director shall:

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

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

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

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

26 “**SECTION 8.** ORS 537.610 is amended to read:

27 “537.610. (1) The Water Resources Commission shall accept all registration statements referred  
28 to in ORS 537.605 completed and returned to the commission in proper form, endorse on the regis-  
29 tration statement the date of the return and record each statement. Upon recording the statement,  
30 the commission shall issue to the registrant a certificate as evidence that the registration is com-  
31 pleted.

32 “(2) The issuance of the certificate of registration serves as prima facie evidence that the reg-  
33 istrant is entitled to a right to appropriate ground water and apply it to beneficial use to the extent  
34 and in the manner disclosed in the recorded registration statement and in the certificate of regis-  
35 tration.

36 “(3) A certificate of registration issued under this section may not be construed as a final de-  
37 termination of any matter stated in the certificate of registration. The right of the registrant to  
38 appropriate ground water under a certificate of registration is subject to determination under ORS  
39 537.670 to 537.695, and is not final or conclusive until so determined and a ground water right cer-  
40 tificate issued. A right to appropriate ground water under a certificate of registration has a tenta-  
41 tive priority from the date when the construction of the well was begun.

42 “(4) The commission shall adopt by rule the process and standards by which the commission will  
43 recognize changes in the place of use, type of use or point of appropriation for claims to appropriate  
44 ground water registered under this section. The commission shall adopt fees not to exceed [*\$500*]  
45 **\$1,125** for actions taken to modify a certificate of registration.

1       “**SECTION 9.** ORS 537.620 is amended to read:

2       “537.620. (1) The Water Resources Department shall accept all applications for permits submit-  
3       ted under ORS 537.615 in proper form.

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

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

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

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

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

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

24      “(5) Upon completion of the initial review and no later than 30 days after determining an ap-  
25      plication to be complete and not defective as described in subsection (2) of this section, the depart-  
26      ment shall notify the applicant of its preliminary determinations and allow the applicant 14 days  
27      from the date of mailing within which to notify the department to stop processing the application  
28      or to proceed with the application. If the applicant notifies the department to stop processing the  
29      application, the department shall return the application and all fees paid in excess of [~~\$150~~] **\$200**.  
30      If the department receives no timely response from the applicant, the department shall proceed with  
31      the application.

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

37      “(7) Within 30 days after the public notice under subsection (6) of this section, any person in-  
38      terested in the application shall submit written comments to the department. Any person who asks  
39      to receive a copy of the department’s proposed final order shall submit to the department the fee  
40      required under ORS 536.050 (1)(p).

41      “**SECTION 10.** ORS 537.621 is amended to read:

42      “537.621. (1) Within 60 days after the Water Resources Department proceeds with the applica-  
43      tion under ORS 537.620 (5), the department shall complete application review and issue a proposed  
44      final order approving or denying the application or approving the application with modifications or  
45      conditions. The department may request the applicant to provide additional information needed to

1 complete the review. If the department requests additional information, the request shall be specific  
2 and shall be sent to the applicant by registered mail. The department shall specify a date by which  
3 the information must be returned, which shall be not less than 10 days after the department mails  
4 the request to the applicant. If the department does not receive the information or a request for a  
5 time extension under ORS 537.627 by the date specified in the request, the department may reject  
6 the application and may refund fees in accordance with ORS 536.050 [(3)(a)] (4)(a). The time period  
7 specified by the department in a request for additional information shall allow the department to  
8 comply with the 60-day time limit established by this subsection.

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

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

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

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

23 “(B) Specifically how the identified aspect of the public welfare, safety and health under ORS  
24 537.525 would be impaired or be adversely affected.

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

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

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

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

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

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

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

38 “(g) Whether the rebuttable presumption under subsection (2) of this section has been estab-  
39 lished;

40 “(h) The date by which protests to the proposed final order must be received by the department;  
41 and

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

43 “(4) In establishing the flow rate and duty of water allowed, the department may consider a  
44 general basin-wide standard, but first shall evaluate information submitted by the applicant to dem-  
45 onstrate the need for a flow rate and duty higher than the general standard. If the applicant pro-

1 vides such information, the department shall authorize the requested rate and duty except upon  
2 specific findings related to the application to support a determination that a lesser amount is  
3 needed. If the applicant does not provide information to demonstrate the need for a flow rate and  
4 duty higher than the general basin-wide standard, the department may apply the general standards  
5 without specific findings related to the application.

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

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

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

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

17 “(b) A description of the protestant’s interest in the proposed final order, and if the protestant  
18 claims to represent the public interest, a precise statement of the public interest represented;

19 “(c) A detailed description of how the action proposed in the proposed final order would impair  
20 or be detrimental to the protestant’s interest;

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

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

24 “(f) [*For persons other than the applicant,*] The protest fee required under ORS 536.050.

25 “(8) Requests for standing and protests on the proposed final order shall be submitted within 45  
26 days after publication of the notice of the proposed final order in the weekly notice published by the  
27 department. Any person who asks to receive a copy of the department’s final order shall submit to  
28 the department the fee required under ORS 536.050 (1)(p), unless the person has previously requested  
29 copies and paid the required fee under ORS 537.620 (7), the person is a protestant and has paid the  
30 fee required under ORS 536.050 (1)(j) or the person has standing and has paid the fee under ORS  
31 536.050 (1)(n).

32 “(9) Within 60 days after the close of the period for receiving protests, the Water Resources  
33 Director shall:

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

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

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

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

40 “**SECTION 11.** ORS 537.785 is amended to read:

41 “537.785. (1) In the administration of ORS 537.505 to 537.795 and 537.992, the Water Resources  
42 Commission shall collect in advance, the fees set forth in ORS [536.050 and] 539.081 for any service  
43 similar to any of those referred to in ORS [536.050 or] 539.081.

44 “(2) All fees collected by the commission under subsection (1) of this section shall be paid into  
45 the General Fund of the State Treasury.

1       “**SECTION 12.** ORS 536.050, as amended by section 5 of this 2009 Act, is amended to read:  
2       “536.050. (1) The Water Resources Department may collect the following fees in advance:  
3       “(a) For examining an application for a permit:  
4       “(A) To appropriate water, except as provided under ORS 543.280 for an application for a hy-  
5       droelectric project:  
6       “(i) A base fee of [~~\$700~~] **\$500** for an appropriation of water through a single use, point of di-  
7       version or point of appropriation;  
8       “(ii) [~~\$250~~] **\$200** for the first second-foot or fraction thereof appropriated under the permit;  
9       “(iii) [~~\$250~~] **\$100** for each additional second-foot or fraction thereof appropriated under the per-  
10      mit;  
11      “(iv) [~~\$250~~] **\$200** for each additional use, point of diversion or point of appropriation included in  
12      the application; **and**  
13      “(v) If appropriating stored water, [~~\$25~~] **\$20** for the first acre-foot or fraction thereof up to 20  
14      acre-feet, plus \$1 for each additional acre-foot or fraction thereof.[: *and*]  
15      “[*(vi) If appropriating ground water, in addition to any other fees, \$300 for each application*  
16      *filed.*]  
17      “(B) To store water under ORS 537.400 or 537.534 (4):  
18      “(i) A base fee of [~~\$700~~] **\$500**; **and**  
19      “(ii) [~~\$25~~] **\$20** for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1 for each ad-  
20      ditional acre-foot or fraction thereof.[: *and*]  
21      “[*(iii) \$100 for each additional storage location.*]  
22      “(C) To exclusively appropriate stored water:  
23      “(i) A base fee of [~~\$400~~] **\$250**; **and**  
24      “(ii) [~~\$25~~] **\$15** for the first acre-foot or fraction thereof up to [20] **10** acre-feet, plus \$1 for each  
25      additional acre-foot or fraction thereof.  
26      “(b) For **recording** a permit [*issued under ORS 537.147, 537.211, 537.409 or 537.625*] to appro-  
27      priate or store water, **\$300**.[:]  
28      “[*(A) A base fee of \$400 for recording the permit; and*]  
29      “[*(B) An additional fee of \$500 if the permit is issued pursuant to a final order that contains pro-*  
30      *visions requested by the applicant for mitigating impacts to the proposed water source.*]  
31      “(c) For filing and recording the assignment or partial assignment of a water right application,  
32      permit or license under ORS 537.220 or 537.635, [~~\$75~~] **\$50**.  
33      “(d) For copying records in the department, \$2 for the first page and 50 cents for each additional  
34      page.  
35      “(e) For certifying copies, documents, records or maps, \$10 for each certificate.  
36      “(f) For a blueprint copy of any map or drawing, the actual cost of the work.  
37      “(g) For a computer-generated map, the actual cost of the work.  
38      “(h) For examining an application for approval of a change to an existing water right or permit:  
39      “(A) A base fee of [~~\$900~~] **\$400** for a change to a single water right or permit;  
40      “(B) [~~\$700~~] **\$400** for each additional type of change requested;  
41      “(C) For a request for a change in place of use or type of use or for a water exchange under  
42      ORS 540.533, [~~\$250~~] **\$200** for each second-foot or fraction thereof requested beyond the first second-  
43      foot; **and**  
44      “(D) [~~\$400~~] **\$200** for each additional water right or permit included in the application.[: *and*]  
45      “[*(E) An additional fee of \$300 per application, if the application is for an additional point of ap-*

1 *appropriation, a change in a point of appropriation or a change from surface water to ground water or*  
2 *for substitution as described in ORS 540.524.]*

3 “(i) For examining an application for a temporary change in place of use under ORS 540.523, for  
4 a temporary transfer under ORS 540.585 or for a temporary change in place of use, a change in the  
5 point of diversion to allow for the appropriation of ground water or a change of a primary right to  
6 a supplemental right under ORS 540.570, a base fee of [~~\$600~~] **\$200** for the first water right or permit,  
7 plus [~~\$200~~] **\$50** for each additional water right or permit included in the application and:

8 “(A) For nonirrigation uses, [~~\$150~~] **\$80** for each second-foot or fraction thereof requested beyond  
9 the first second-foot; or

10 “(B) For irrigation uses, [~~\$2~~] **\$1** per acre of land irrigated or, if the application and required  
11 map are submitted to the department in a department-approved digital format, [~~50~~] **25** cents per acre  
12 of land irrigated.

13 “(j) For submitting a protest to the department, **\$350**.[.]

14 “[~~(A) \$600 if the protest is by a nonapplicant; and~~]

15 “[~~(B) \$300 if the protest is by an applicant.~~]

16 “(k) For filing an application for extension of time within which irrigation or other works shall  
17 be completed or a water right perfected, [~~\$500~~] **\$350**.

18 “(L) For a limited license under ORS 537.143 or 537.534 (2), the fee established by rule by the  
19 Water Resources Commission.

20 “(m) For filing, examining and certifying a petition under ORS 541.329, [~~\$300~~] **\$250** plus 10 cents  
21 per acre of water involved in the application. For purposes of computing this fee, when any acreage  
22 within a quarter quarter of a section is involved, the 10 cents per acre shall apply to all acres in  
23 that quarter quarter of a section. Notwithstanding the fee amount established in this paragraph, a  
24 district notifying the department under ORS 541.327 (4) shall pay the actual cost of filing, examining  
25 and certifying the petition.

26 “(n) For requesting standing under ORS 537.153, 537.621 or 543A.120, [~~\$150~~] **\$100**.

27 “(o) For participating in a contested case proceeding under ORS 537.170, 537.622 or 543A.130,  
28 [~~\$350~~] **\$250**.

29 “(p) Except for an applicant, for obtaining a copy of both a proposed final order and a final or-  
30 der for a water right application under ORS 537.140 to 537.252, 537.505 to 537.795 or 543A.005 to  
31 543A.300 or an extension issued under ORS 537.230, 537.248 or 537.630, [~~\$20~~] **\$10**.

32 “(q) For examining an application to store water under ORS 537.409:

33 “(A) A base fee of [~~\$300~~] **\$80**; and

34 “(B) [~~\$25~~] **\$20** for each acre-foot or fraction thereof.

35 “(r) For submitting a notice of intent under ORS 543A.030 or 543A.075, the amount established  
36 by the Water Resources Director under ORS 543A.410.

37 “(s) For examining an application for a substitution made under ORS 540.524, **\$280**.[.]

38 “[~~(A) A base fee of \$630 for the first well substitution; and~~]

39 “[~~(B) A fee of \$300 for each additional well substitution.~~]

40 “(t) For examining an application for an allocation of conserved water under ORS 537.455 to  
41 537.500, **\$700**.[.]

42 “[~~(A) A base fee of \$850 for the first water right that is part of the allocation; and~~]

43 “[~~(B) An additional fee of \$300 for each water right that is part of the allocation beyond the first~~  
44 ~~water right.]~~

45 “(u) For submitting a water management and conservation plan pursuant to rules of the com-

1 mission:

2 “(A) [~~\$400~~] **\$250**, if the plan is submitted by an agricultural water supplier;

3 “(B) [~~\$800~~] **\$500**, if the plan is submitted by a municipal water supplier serving a population of

4 1,000 or fewer persons; or

5 “(C) [~~\$1,600~~] **\$1,000**, if the plan is submitted by a municipal water supplier serving a population

6 of more than 1,000 persons.

7 “(v) For examining a new application for an in-stream water right lease under ORS 537.348:

8 “(A) [~~\$400~~] **\$200** for an application for a lease with four or more landowners or four or more

9 water rights; or

10 “(B) [~~\$250~~] **\$100** for all other applications.

11 “(w) For examining an application for an in-stream water right lease renewal, [~~\$100~~] **\$50**.

12 “[~~(x)~~] *For submitting a claim of beneficial use under a permit having a priority date of July 9, 1987,*

13 *or later, \$150.*]

14 “[~~(y)~~] *For submitting a request no later than 60 days after cancellation of a permit under ORS*

15 *537.260 to reinstate the permit, \$400.*]

16 “[~~(z)~~] *For submitting a request for a basin plan exception under ORS 536.295, \$500.*]

17 “[~~(2)(a)~~] *The department may charge a dam owner an annual fee based upon the dam’s hazard*

18 *rating as determined by the department. The fees the department may charge the dam owner are:]*

19 “[~~(A)~~] *\$75 for a dam with a low hazard rating.*]

20 “[~~(B)~~] *\$150 for a dam with a significant hazard rating.*]

21 “[~~(C)~~] *\$500 for a dam with a high hazard rating.*]

22 “[~~(D)~~] *If the dam owner fails to pay an annual fee on or before six months after the billing date,*

23 *a late fee of \$100.*]

24 “[~~(b)~~] *If a dam owner fails to pay an annual fee or a late fee charged by the department, the de-*

25 *partment may, after giving the dam owner notice by certified mail, place a lien on the real property*

26 *where the dam is located for the fees owed by the dam owner.*]

27 “[~~(3)~~] **(2)** Notwithstanding the fees established under subsection (1) of this section, the commis-

28 sion may establish lower examination and permit fees by rule for:

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

30 “(b) The right to appropriate water for the purpose of allowing the applicant to water livestock

31 outside of a riparian area, as that term is defined in ORS 541.351.

32 “[~~(4)(a)~~] **(3)(a)** The director may refund all or part of a fee paid to the department under this

33 section if the director determines that a refund of the fee is appropriate in the interests of fairness

34 to the public or necessary to correct an error of the department.

35 “(b) The director may refund all or part of the protest fee described in subsection (1)(j) of this

36 section to the legal owner or occupant who filed a protest under ORS 540.641 if an order of the

37 Water Resources Commission establishes that all or part of a water right has not been canceled or

38 modified under ORS 540.610 to 540.650.

39 “[~~(5)~~] **(4)** The director may waive all or part of a fee for a change to a water right permit under

40 ORS 537.211 (4), a change to a water right subject to transfer under ORS 540.520 or 540.523 or an

41 allocation of conserved water under ORS 537.470, if the change or allocation of conserved water is:

42 “(a) Made pursuant to ORS 537.348;

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

44 “(c) Approved by the State Department of Fish and Wildlife as a change or allocation of con-

45 served water that will result in a net benefit to fish and wildlife habitat.

1 “[(6)] (5) Notwithstanding the fees established pursuant to this section, the commission may  
2 adopt by rule reduced fees for persons submitting materials to the department in a digital format  
3 approved by the department.

4 “[(7)] (6) All moneys received under this section, less any amounts refunded under subsection  
5 [(4)] (3) of this section, shall be deposited in the Water Resources Department Water Right Operat-  
6 ing Fund.

7 “[(8)] (7) Notwithstanding subsection [(7)] (6) of this section, all fees received by the department  
8 for power purposes under ORS 543.280 shall be deposited in the Water Resources Department Hy-  
9 droelectric Fund established by ORS 536.015.

10 “**SECTION 13.** ORS 537.150, as amended by section 6 of this 2009 Act, is amended to read:

11 “537.150. (1) Within 15 days after receiving an application, the Water Resources Department  
12 shall determine whether the application contains the information listed under ORS 537.140 (1) and  
13 is complete and not defective, including the payment of all fees required under ORS 537.140 (5). If  
14 the department determines that the application is incomplete or defective or that not all fees have  
15 been paid, the department shall return the fees paid and the application.

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

21 “(3) If an application is complete and not defective, the department shall determine whether the  
22 proposed use is prohibited by ORS chapter 538. If the proposed use is prohibited by ORS chapter  
23 538, the department shall reject the application and return all fees to the applicant with an expla-  
24 nation of the statutory prohibition.

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

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

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

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

32 “(5) Upon completion of the initial review and no later than 30 days after determining an ap-  
33 plication to be complete and not defective as described in subsection (1) of this section, the depart-  
34 ment shall notify the applicant of its preliminary determinations and allow the applicant 14 days  
35 from the date of mailing within which to notify the department to stop processing the application  
36 or to proceed with the application. If the applicant notifies the department to stop processing the  
37 application, the department shall return the application and all fees paid in excess of [\$200] **\$150**.  
38 If the department receives no timely response from the applicant, the department shall proceed with  
39 the application.

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

45 “(7) Within 30 days after the public notice under subsection (6) of this section, any person in-

1 terested in the application shall submit written comments to the department. Any person who asks  
2 to receive a copy of the department's proposed final order shall submit to the department the fee  
3 required under ORS 536.050 (1).

4 **"SECTION 14.** ORS 537.153, as amended by section 7 of this 2009 Act, is amended to read:

5 "537.153. (1) Within 60 days after the Water Resources Department proceeds with the applica-  
6 tion under ORS 537.150 (5), the department shall complete application review and issue a proposed  
7 final order approving or denying the application or approving the application with modifications or  
8 conditions. The department may request the applicant to provide additional information needed to  
9 complete the review. If the department requests additional information, the request shall be specific  
10 and shall be sent to the applicant by registered mail. The department shall specify a date by which  
11 the information must be returned, which shall be not less than 10 days after the department mails  
12 the request to the applicant. If the department does not receive the information or a request for a  
13 time extension under ORS 537.175 by the date specified in the request, the department may reject  
14 the application and may refund fees in accordance with ORS 536.050 [(4)(a)] **(3)(a)**. The time period  
15 specified by the department in a request for additional information shall allow the department to  
16 comply with the 60-day time limit established by this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

1           “(h) The date by which protests to the proposed final order must be received by the department.  
2           “(4) The department shall mail copies of the proposed final order to the applicant and to persons  
3 who have requested copies and paid the fee required under ORS 536.050 (1)(p). The department also  
4 shall publish notice of the proposed final order by publication in the weekly notice published by the  
5 department.  
6           “(5) Any person who supports a proposed final order may request standing for purposes of par-  
7 ticipating in any contested case proceeding on the proposed final order or for judicial review of a  
8 final order. A request for standing shall be in writing and shall be accompanied by the fee estab-  
9 lished under ORS 536.050 (1)(n).  
10          “(6) Any person may submit a protest against a proposed final order. A protest shall be in  
11 writing and shall include:  
12           “(a) The name, address and telephone number of the protestant;  
13           “(b) A description of the protestant’s interest in the proposed final order and, if the protestant  
14 claims to represent the public interest, a precise statement of the public interest represented;  
15           “(c) A detailed description of how the action proposed in the proposed final order would impair  
16 or be detrimental to the protestant’s interest;  
17           “(d) A detailed description of how the proposed final order is in error or deficient and how to  
18 correct the alleged error or deficiency;  
19           “(e) Any citation of legal authority supporting the protest, if known; and  
20           “(f) **For persons other than the applicant**, the protest fee required under ORS 536.050.  
21          “(7) Requests for standing and protests on the proposed final order shall be submitted within 45  
22 days after publication of the notice of the proposed final order in the weekly notice published by the  
23 department. Any person who asks to receive a copy of the department’s final order shall submit to  
24 the department the fee required under ORS 536.050 (1)(p), unless the person has previously requested  
25 copies and paid the required fee under ORS 537.150 (7), the person is a protestant and has paid the  
26 fee required under ORS 536.050 (1)(j) or the person has standing and has paid the fee under ORS  
27 536.050 (1)(n).  
28          “(8) Within 60 days after the close of the period for receiving protests, the Water Resources  
29 Director shall:  
30           “(a) Issue a final order as provided under ORS 537.170 (6); or  
31           “(b) Schedule a contested case hearing if a protest has been submitted and if:  
32           “(A) Upon review of the issues, the director finds that there are significant disputes related to  
33 the proposed use of water; or  
34           “(B) Within 30 days after the close of the period for submitting protests, the applicant requests  
35 a contested case hearing.  
36          “**SECTION 15.** ORS 537.610, as amended by section 8 of this 2009 Act, is amended to read:  
37          “537.610. (1) The Water Resources Commission shall accept all registration statements referred  
38 to in ORS 537.605 completed and returned to the commission in proper form, endorse on the regis-  
39 tration statement the date of the return and record each statement. Upon recording the statement,  
40 the commission shall issue to the registrant a certificate as evidence that the registration is com-  
41 pleted.  
42          “(2) The issuance of the certificate of registration serves as prima facie evidence that the reg-  
43 istrant is entitled to a right to appropriate ground water and apply it to beneficial use to the extent  
44 and in the manner disclosed in the recorded registration statement and in the certificate of regis-  
45 tration.

1 “(3) A certificate of registration issued under this section may not be construed as a final de-  
2 termination of any matter stated in the certificate of registration. The right of the registrant to  
3 appropriate ground water under a certificate of registration is subject to determination under ORS  
4 537.670 to 537.695, and is not final or conclusive until so determined and a ground water right cer-  
5 tificate issued. A right to appropriate ground water under a certificate of registration has a tenta-  
6 tive priority from the date when the construction of the well was begun.

7 “(4) The commission shall adopt by rule the process and standards by which the commission will  
8 recognize changes in the place of use, type of use or point of appropriation for claims to appropriate  
9 ground water registered under this section. The commission shall adopt fees not to exceed [~~\$1,125~~]  
10 **\$500** for actions taken to modify a certificate of registration.

11 “**SECTION 16.** ORS 537.620, as amended by section 9 of this 2009 Act, is amended to read:

12 “537.620. (1) The Water Resources Department shall accept all applications for permits submit-  
13 ted under ORS 537.615 in proper form.

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

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

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

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

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

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

34 “(5) Upon completion of the initial review and no later than 30 days after determining an ap-  
35 plication to be complete and not defective as described in subsection (2) of this section, the depart-  
36 ment shall notify the applicant of its preliminary determinations and allow the applicant 14 days  
37 from the date of mailing within which to notify the department to stop processing the application  
38 or to proceed with the application. If the applicant notifies the department to stop processing the  
39 application, the department shall return the application and all fees paid in excess of [~~\$200~~] **\$150**.  
40 If the department receives no timely response from the applicant, the department shall proceed with  
41 the application.

42 “(6) Within seven days after proceeding with the application under subsection (5) of this section,  
43 the department shall give public notice of the application in the weekly notice published by the de-  
44 partment. The notice shall include a request for comments on the application and information per-  
45 taining to how an interested person may obtain future notices about the application and a copy of

1 the proposed final order.

2 “(7) Within 30 days after the public notice under subsection (6) of this section, any person in-  
3 terested in the application shall submit written comments to the department. Any person who asks  
4 to receive a copy of the department’s proposed final order shall submit to the department the fee  
5 required under ORS 536.050 (1)(p).

6 “**SECTION 17.** ORS 537.621, as amended by section 10 of this 2009 Act, is amended to read:

7 “537.621. (1) Within 60 days after the Water Resources Department proceeds with the applica-  
8 tion under ORS 537.620 (5), the department shall complete application review and issue a proposed  
9 final order approving or denying the application or approving the application with modifications or  
10 conditions. The department may request the applicant to provide additional information needed to  
11 complete the review. If the department requests additional information, the request shall be specific  
12 and shall be sent to the applicant by registered mail. The department shall specify a date by which  
13 the information must be returned, which shall be not less than 10 days after the department mails  
14 the request to the applicant. If the department does not receive the information or a request for a  
15 time extension under ORS 537.627 by the date specified in the request, the department may reject  
16 the application and may refund fees in accordance with ORS 536.050 [(4)(a)] **(3)(a)**. The time period  
17 specified by the department in a request for additional information shall allow the department to  
18 comply with the 60-day time limit established by this subsection.

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

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

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

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

33 “(B) Specifically how the identified aspect of the public welfare, safety and health under ORS  
34 537.525 would be impaired or be adversely affected.

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

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

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

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

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

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

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

3 “(g) Whether the rebuttable presumption under subsection (2) of this section has been estab-  
4 lished;

5 “(h) The date by which protests to the proposed final order must be received by the department;  
6 and

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

8 “(4) In establishing the flow rate and duty of water allowed, the department may consider a  
9 general basin-wide standard, but first shall evaluate information submitted by the applicant to dem-  
10 onstrate the need for a flow rate and duty higher than the general standard. If the applicant pro-  
11 vides such information, the department shall authorize the requested rate and duty except upon  
12 specific findings related to the application to support a determination that a lesser amount is  
13 needed. If the applicant does not provide information to demonstrate the need for a flow rate and  
14 duty higher than the general basin-wide standard, the department may apply the general standards  
15 without specific findings related to the application.

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

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

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

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

27 “(b) A description of the protestant’s interest in the proposed final order, and if the protestant  
28 claims to represent the public interest, a precise statement of the public interest represented;

29 “(c) A detailed description of how the action proposed in the proposed final order would impair  
30 or be detrimental to the protestant’s interest;

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

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

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

35 “(8) Requests for standing and protests on the proposed final order shall be submitted within 45  
36 days after publication of the notice of the proposed final order in the weekly notice published by the  
37 department. Any person who asks to receive a copy of the department’s final order shall submit to  
38 the department the fee required under ORS 536.050 (1)(p), unless the person has previously requested  
39 copies and paid the required fee under ORS 537.620 (7), the person is a protestant and has paid the  
40 fee required under ORS 536.050 (1)(j) or the person has standing and has paid the fee under ORS  
41 536.050 (1)(n).

42 “(9) Within 60 days after the close of the period for receiving protests, the Water Resources  
43 Director shall:

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

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

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

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

5           “**SECTION 18. The amendments to ORS 536.050, 537.150, 537.153, 537.610, 537.620 and**  
6 **537.621 by sections 12 to 17 of this 2009 Act become operative July 1, 2013.**

7           “**SECTION 19. This 2009 Act being necessary for the immediate preservation of the public**  
8 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**  
9 **July 1, 2009.”**

10

---