

House Bill 2135

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

SUMMARY

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

Reduces required number of newspaper publications for certain notices pertaining to water.

A BILL FOR AN ACT

1
2 Relating to reductions in newspaper notice requirements; creating new provisions; and amending
3 ORS 536.340, 536.380, 536.410, 537.130, 537.145, 537.252, 537.670, 537.805, 540.520, 540.535, 541.329,
4 541.331 and 543.220.

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

6 **SECTION 1.** ORS 536.340 is amended to read:

7 536.340. (1) Subject at all times to existing rights and priorities to use waters of this state, the
8 Water Resources Commission:

9 (a) May, by a water resources statement referred to in ORS 536.300 (2), classify and reclassify
10 the lakes, streams, underground reservoirs or other sources of water supply in this state as to the
11 highest and best use and quantities of use thereof for the future in aid of an integrated and balanced
12 program for the benefit of the state as a whole. The commission may so classify and reclassify
13 portions of any such sources of water supply separately. Classification or reclassification of sources
14 of water supply as provided in this subsection has the effect of restricting the use and quantities
15 of use thereof to the uses and quantities of uses specified in the classification or reclassification,
16 and no other uses or quantities of uses except as approved by the commission under ORS 536.370
17 to 536.390 or as accepted by the commission under ORS 536.295. Restrictions on use and quantities
18 of use of a source of water supply resulting from a classification or reclassification under this sub-
19 section shall apply to the use of all waters of this state affected by the classification or reclassi-
20 fication, and shall apply to uses listed in ORS 537.545 that are initiated after the classification or
21 reclassification that imposes the restriction.

22 (b) Shall diligently enforce laws concerning cancellation, release and discharge of excessive
23 unused claims to waters of this state to the end that such excessive and unused amounts may be
24 made available for appropriation and beneficial use by the public.

25 (c) May, by a water resources statement referred to in ORS 536.300 (2) and subject to the pref-
26 erential uses named in ORS 536.310 (12), prescribe preferences for the future for particular uses and
27 quantities of uses of the waters of any lake, stream or other source of water supply in this state in
28 aid of the highest and best beneficial use and quantities of use thereof. In prescribing such prefer-
29 ences the commission shall give effect and due regard to the natural characteristics of such sources
30 of water supply, the adjacent topography, the economy of such sources of water supply, the economy
31 of the affected area, seasonal requirements of various users of such waters, the type of proposed use

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

1 as between consumptive and nonconsumptive uses and other pertinent data.

2 (2) In classifying or reclassifying a source of water supply or prescribing preferences for the
 3 future uses of a source of water supply under subsection (1) of this section, the commission shall:

4 (a) Comply with the requirements set forth in the Water Resources Department coordination
 5 program developed pursuant to ORS 197.180; and

6 (b) Cause notice of the hearing held under ORS 536.300 (3) to be published in a newspaper of
 7 general circulation [*once each week for four successive weeks*] in each county:

8 (A) In which waters affected by the action of the commission under subsection (1) of this section
 9 are located; or

10 (B) That is located within the basin under consideration.

11 (3) Before beginning any action under subsection (2) of this section that would limit new ground
 12 water uses that are exempt under ORS 537.545 from the requirement to obtain a water right, the
 13 commission shall:

14 (a) Review the proposed action to determine whether the proposal is consistent with ORS
 15 537.780;

16 (b) Provide an opportunity for review by:

17 (A) Any member of the Legislative Assembly who represents a district where the proposed
 18 action would apply; and

19 (B) Any interim committee of the Legislative Assembly responsible for water-related issues; and

20 (c) Receive and consider a recommendation on the proposal from the ground water advisory
 21 committee appointed under ORS 536.090.

22 **SECTION 2.** ORS 536.380 is amended to read:

23 536.380. (1) Except as otherwise provided in ORS 536.390, [*whenever*] **if** any state agency or
 24 public corporation of this state [*which*] **that** has received a copy of a state water resources state-
 25 ment as provided in ORS 536.350, proposes to exercise any power, duty or privilege referred to in
 26 ORS 536.370 (1), it shall first file with the Water Resources Commission a notification of the pro-
 27 posed exercise. The notification shall be in such form and shall contain a description of the proposed
 28 exercise and such other information as the commission may require. The notification shall be a
 29 public record in the office of the commission.

30 (2) Within 30 days after the filing of the notification as provided in subsection (1) of this section,
 31 the commission shall notify the state agency or public corporation of the intention of the commission
 32 to review the proposed exercise of the power, duty or privilege, if:

33 (a) The commission, in its discretion, determines that a review should be undertaken; or

34 (b) A protest against the proposed exercise is filed with the commission within 25 days after the
 35 filing of the notification as provided in subsection (1) of this section by any person, state agency or
 36 public corporation of this state or agency of the federal government.

37 (3) The commission, in its discretion, may hold a public hearing on the proposed exercise of the
 38 power, duty or privilege. The commission shall determine the time and place of the public hearing,
 39 and shall give written notice thereof to the state agency or public corporation whose proposed ex-
 40 ercise of a power, duty or privilege is being reviewed and to each protestant under subsection (2)(b)
 41 of this section, if any, at least 10 days prior to the hearing. Notice of the hearing shall also be
 42 published [*in at least one issue each week for*] at least two [*consecutive*] weeks prior to the hearing
 43 in a newspaper of general circulation published in each county in which the proposed exercise of
 44 the power, duty or privilege is to take place or be effective.

45 (4) After the commission has notified the state agency or public corporation of the intention of

1 the commission to review the proposed exercise of the power, duty or privilege as provided in sub-
 2 section (2) of this section, the commission shall undertake the review and proceed therewith with
 3 reasonable diligence. At the conclusion of the review the commission shall make a determination
 4 approving the proposed exercise, approving the proposed exercise subject to conditions specified in
 5 the determination or disapproving the proposed exercise. A copy of the determination by the com-
 6 mission shall be delivered to the state agency or public corporation whose proposed exercise of a
 7 power, duty or privilege was reviewed and to each protestant under subsection (2)(b) of this section,
 8 if any.

9 **SECTION 3.** ORS 536.410 is amended to read:

10 536.410. (1) When the Water Resources Commission determines that it is necessary to [*insure*]
 11 **ensure** compliance with the state water resources policy or that it is otherwise necessary in the
 12 public interest to conserve the water resources of this state for the maximum beneficial use and
 13 control thereof that any unappropriated waters of this state, including unappropriated waters re-
 14 leased from storage or impoundment into the natural flow of a stream for specified purposes, be
 15 withdrawn from appropriation for all or any uses including exempt uses under ORS 537.545, the
 16 commission, on behalf of the state, may issue an order of withdrawal.

17 (2) Prior to the issuance of the order of withdrawal the commission shall hold a public hearing
 18 on the necessity for the withdrawal. Notice of the hearing shall be published [*in at least one issue*
 19 *each week for*] at least two [*consecutive*] weeks prior to the hearing in a newspaper of general cir-
 20 culation published in each county in which are located the waters proposed to be withdrawn.

21 (3) The order of withdrawal shall specify with particularity the waters withdrawn from appro-
 22 priation, the uses for which the waters are withdrawn, the reason for the withdrawal and the du-
 23 ration of the withdrawal. The commission may modify or revoke the order at any time.

24 (4) Copies of the order of withdrawal and notices of any modification or revocation of the order
 25 of withdrawal shall be filed in the Water Resources Department.

26 (5) While the order of withdrawal is in effect, no application for a permit to appropriate the
 27 waters withdrawn for the uses specified in the order and no application for a preliminary permit or
 28 license involving appropriations of such waters shall be received for filing by the Water Resources
 29 Commission.

30 **SECTION 4.** ORS 537.130 is amended to read:

31 537.130. (1) Except for a use exempted under ORS 537.040, 537.141, 537.142, 537.143 or 537.800
 32 or under the registration system set forth in ORS 537.132, any person intending to acquire the right
 33 to the beneficial use of any of the surface waters of this state shall, before beginning construction,
 34 enlargement or extension of any ditch, canal or other distributing or controlling works, or per-
 35 forming any work in connection with the construction, or proposed appropriation, make an applica-
 36 tion to the Water Resources Department for a permit to make the appropriation.

37 (2) Except for a use exempted under ORS 537.040, 537.141, 537.142, 537.143 or 537.800 or under
 38 the registration system set forth in ORS 537.132, a person may not use, store or divert any waters
 39 until after the department issues a permit to appropriate the waters.

40 (3) The department may not issue a permit without notifying the owner, as identified in the ap-
 41 plication, of any land to be crossed by the proposed ditch, canal or other work as set forth in the
 42 application filed pursuant to ORS 537.140. The department shall provide the notice even if the ap-
 43 plicant has obtained written authorization or an easement from the owner.

44 (4) If more than 25 persons are identified in the application as required under subsection (3) of
 45 this section, the department may provide the notice required under subsection (3) of this section by

1 publishing notice of the application in a newspaper having general circulation in the area in which
2 the proposed ditch, canal or other work is located [*at least once each week for at least three succes-*
3 *sive weeks*]. The cost of the publication shall be paid by the applicant in advance to the department.

4 **SECTION 5.** ORS 537.145 is amended to read:

5 537.145. (1) [*Whenever*] **If** an application is made for a permit to appropriate water for hydro-
6 electric purposes, the Water Resources Department shall give written notice of the filing of the ap-
7 plication to the owner of any land that is:

8 (a) Adjacent to any portion of the stream in which the quantity of water will be decreased by
9 the project; or

10 (b) Adjacent to the site of the proposed hydroelectric project.

11 (2) The department shall also publish notice of the application [*once each week for at least four*
12 *successive weeks and for such further time, if any, as the department shall determine,*] in a newspaper
13 of general circulation in each county in which the project covered by the application is located.

14 **SECTION 6.** ORS 537.252 is amended to read:

15 537.252. (1) When issuing a water right certificate under ORS 537.250 to a district, or to a gov-
16 ernment agency for a district, the Water Resources Department may issue the water right certificate
17 for land not described in the permit if:

18 (a) Water furnished by the district under the permit has been applied beneficially to the land;

19 (b) The land not described in the permit that is proposed to be included in the certificate is in-
20 cluded within the legally established boundaries of the district and is subject to the charges, as-
21 sessments and liens of the district;

22 (c) The certificate does not authorize a greater rate, duty or acreage than is authorized by the
23 terms of the permit, and all other conditions of the permit are satisfied;

24 (d) The inclusion of land not described in the permit will not result in injury to other existing
25 water rights or in enlargement of the right authorized under the permit; and

26 (e) The impact to the water source of including land not described in the permit will not differ
27 significantly from the impact expected at the time the permit was issued for the lands described in
28 the permit.

29 (2) If a district proposes to use water on lands not described in the permit, the Water Resources
30 Department may issue a certificate that includes such additional lands if all of the conditions of
31 subsection (1) of this section are satisfied and if, no later than 60 days before the district actually
32 applies the water to the lands not described in the permit, the district provides written notice to the
33 department. The notice shall include a copy of the original permit map modified to show the lands
34 to be added and lands to be removed from the description of the place of use of the water. Upon
35 receipt of the notice from the district, the department shall provide public notice of the proposed
36 change by means of publication in the department's weekly notice and by publication [*once each*
37 *week for three successive weeks*] in a newspaper having general circulation in the county or counties
38 in which the affected lands are located. The cost of publication shall be paid by the district.

39 (3) If a district has issued an order of inclusion or exclusion, the boundaries of the irrigation
40 district shall be deemed to have been legally changed in the absence of approval of the Secretary
41 of the Interior.

42 (4) As used in this section:

43 (a) "District" has the meaning given in ORS 540.505.

44 (b) "Legally established boundaries" means the boundaries of a district as established at the
45 time of creation of the district and as the boundaries may have changed after creation of the district

1 by an inclusion, exclusion or merger proceeding according to state law.

2 **SECTION 7.** ORS 537.670 is amended to read:

3 537.670. (1) The Water Resources Director upon the motion of the director or, in the discretion
4 of the director, upon receipt of a petition therefor by any one or more appropriators of ground water
5 from such ground water reservoir, may proceed to make a final determination of the rights to ap-
6 propriate the ground water of any ground water reservoir in this state.

7 (2) The director shall prepare a notice of intent to begin a determination referred to in sub-
8 section (1) of this section. The notice shall set forth a place and time when the director or the au-
9 thorized assistant of the director shall begin the taking of testimony as to the rights of the various
10 claimants to appropriate the ground water of the ground water reservoir and as to the boundaries
11 and depth thereof. A copy of the notice shall be delivered to each person or public agency known
12 to the director from an examination of the records in the Water Resources Department to be a
13 claimant to a right to appropriate ground water of the ground water reservoir or any surface water
14 within the area in which the ground water reservoir is located. The notice shall also be published
15 [*in at least one issue each week for at least two consecutive weeks*] in a newspaper of general circu-
16 lation published in each county in which the ground water reservoir or any part thereof is located.
17 If the ground water reservoir is located in whole or in part within the limits of any city, the notice
18 shall be published [*in at least one issue each week for at least two consecutive weeks*] in a newspaper
19 of general circulation published in the city, if any, and copies of the notice shall be delivered to the
20 mayor or chairperson of the governing body of the city. Copies of the notice shall be delivered and
21 the [*last*] publication date of published notices shall be at least 30 days prior to the taking of any
22 testimony.

23 (3) The director shall enclose with each copy of the notice referred to in subsection (2) of this
24 section delivered to each person or public agency known to be a claimant to a right to appropriate
25 ground water of the ground water reservoir a blank form on which such claimant shall present in
26 writing all the particulars necessary for determination of the right of the claimant as may be pre-
27 scribed by the director. The director may require each claimant to certify to the statements of the
28 claimant under oath, and the director or the authorized assistant of the director may administer
29 such oaths.

30 **SECTION 8.** ORS 537.805 is amended to read:

31 537.805. Notwithstanding any other provision of ORS 537.801 to 537.809, an application governed
32 by ORS 537.803 shall be processed as follows:

33 (1) Upon determination that the application is acceptable, the Water Resources Commission
34 shall conduct a comprehensive review of the application, at the applicant's expense.

35 (2) When the comprehensive review is complete, the commission shall issue a preliminary anal-
36 ysis of the application that addresses the factors under ORS 537.803 and any other information the
37 commission considers relevant. The preliminary analysis, or a reasonable summary, shall be pub-
38 lished at the applicant's expense [*for three consecutive weeks*] in a newspaper of general circulation
39 in the basin of origin of the proposed appropriation, diversion or impoundment.

40 (3) Following publication, the commission shall conduct a public hearing at the applicant's ex-
41 pense, in the basin of origin. The hearing shall be for comment on the factors analyzed under ORS
42 537.803 and standards that otherwise apply to the proposed appropriation or transfer.

43 (4) After considering the application, the information generated during the comprehensive re-
44 view of the application, all comments received at the hearing and written comments received within
45 20 days after the date of the public hearing, the commission shall:

1 (a) If the application requires legislative approval under ORS 537.810, submit a report to the
 2 Legislative Assembly that addresses all factors analyzed under ORS 537.803 and recommends
 3 whether to approve or deny the application for use of water outside the basin of origin; or

4 (b) If the application does not require legislative approval under ORS 537.810, approve or deny
 5 the application in accordance with the procedures and standards that otherwise govern the appli-
 6 cation, giving due consideration to factors set forth in ORS 537.803.

7 **SECTION 9.** ORS 540.520 is amended to read:

8 540.520. (1) Except when the application is made under ORS 541.327 or when an application for
 9 a temporary transfer is made under ORS 540.523, [*whenever*] **if** the holder of a water use subject to
 10 transfer for irrigation, domestic use, manufacturing purposes, or other use, for any reason desires
 11 to change the place of use, the point of diversion, or the use made of the water, an application to
 12 make such change, as the case may be, shall be filed with the Water Resources Department.

13 (2) The application required under subsection (1) of this section shall include:

14 (a) The name of the owner;

15 (b) The previous use of the water;

16 (c) A description of the premises upon which the water is used;

17 (d) A description of the premises upon which it is proposed to use the water;

18 (e) The use [*which*] **that** is proposed to be made of the water;

19 (f) The reasons for making the proposed change; and

20 (g) Evidence that the water has been used over the past five years according to the terms and
 21 conditions of the owner's water right certificate or that the water right is not subject to forfeiture
 22 under ORS 540.610.

23 (3) If the application required under subsection (1) of this section is necessary to allow a change
 24 in a water right pursuant to ORS 537.348, is necessary to complete a project funded under ORS
 25 541.375, or is approved by the State Department of Fish and Wildlife as a change that will result in
 26 a net benefit to fish and wildlife habitat, the department, at the discretion of the Water Resources
 27 Director, may waive or assist the applicant in satisfying the requirements of subsection (2)(c) and
 28 (d) of this section. The assistance provided by the department may include, but need not be limited
 29 to, development of an application map.

30 (4) If the application is to change the point of diversion, the transfer shall include a condition
 31 that the holder of the water right provide a proper fish screen at the new point of diversion, if re-
 32 quested by the State Department of Fish and Wildlife.

33 (5) Upon the filing of the application the department shall give notice by publication in a
 34 newspaper having general circulation in the area in which the water rights are located[, *for a period*
 35 *of at least three weeks and not less than one publication each week. The notice shall include the date*
 36 *on which the last notice by publication will occur*]. The cost of the publication shall be paid by the
 37 applicant in advance to the department. In applications for only a change in place of use or for a
 38 change in the point of diversion of less than one-fourth mile, and where there are no intervening
 39 diversions between the old diversion of the applicant and the proposed new diversion, no newspaper
 40 notice need be published. The department shall include notice of such applications in the weekly
 41 notice published by the department.

42 (6) Within 30 days after the [*last*] publication of [*a*] **the** newspaper notice of the proposed
 43 transfer or the mailing of the department's weekly notice, whichever is later, any person may file,
 44 jointly or severally, with the department, a protest against approval of the application.

45 (7) [*Whenever*] **If** a timely protest is filed, or in the opinion of the Water Resources Director a

1 hearing is necessary to determine whether the proposed changes as described by the application
 2 would result in injury to existing water rights, the department shall hold a hearing on the matter.
 3 Notice and conduct of the hearing shall be under the provisions of ORS chapter 183, pertaining to
 4 contested cases, and shall be held in the area where the rights are located unless all parties and
 5 persons who filed a protest under this subsection stipulate otherwise.

6 (8) An application for a change of use under this section is not required if the beneficial use
 7 authorized by the water use subject to transfer is irrigation and the owner of the water right uses
 8 the water for incidental agricultural, stock watering and other uses related to irrigation use, so long
 9 as there is no increase in the rate, duty, total acreage benefited or season of use.

10 (9) A water right transfer under subsection (1) of this section is not required for a general in-
 11 dustrial use that was not included in a water right certificate issued for a specific industrial use if:

12 (a) The quantity of water used for the general industrial use is not greater than the rate allowed
 13 in the original water right and not greater than the quantity of water diverted to satisfy the au-
 14 thorized specific use under the original water right;

15 (b) The location where the water is to be used for general industrial use was owned by the
 16 holder of the original water right at the time the water right permit was issued; and

17 (c) The person who makes the change in water use provides the following information to the
 18 Water Resources Department:

19 (A) The name and mailing address of the person using water under the water right;

20 (B) The water right certificate number;

21 (C) A description of the location of the industrial facility owned by the holder of the original
 22 water right at the time the water right permit was issued; and

23 (D) A description of the general industrial use to be made of the water after the change.

24 **SECTION 10.** ORS 540.535 is amended to read:

25 540.535. After receipt of an exchange application, the Water Resources Commission shall give
 26 notice of the application by publishing notice of the application in a newspaper having general cir-
 27 culation in the area in which the water uses are located [*at least once each week for at least three*
 28 *successive weeks*]. The cost of providing the notice by publication shall be paid in advance by the
 29 applicant to the commission.

30 **SECTION 11.** ORS 541.329 is amended to read:

31 541.329. (1) Pursuant to the requirements of subsection (2) of this section, a district may petition
 32 the Water Resources Commission for approval and acceptance of a district map indicating the lo-
 33 cation and use of the water rights within the district or any part thereof. The petition and map shall
 34 be in a form satisfactory to the commission and shall be certified by the district rather than a cer-
 35 tified water right examiner. For a district that notifies the Water Resources Department under ORS
 36 541.327 (4), the map must be submitted in an electronic format meeting the standards set by the
 37 department. The petition and map may not expand a water right of the district or its users beyond
 38 the total right of record of the district. If the district has met the requirements of ORS 541.325 to
 39 541.331 and after the opportunity for hearing under ORS 541.331, the commission shall instruct the
 40 director to issue a new certificate to the district listing the requested locations and uses and re-
 41 taining the original priority date. If the commission denies the petition, the commission shall hold
 42 a hearing on the denial. Notice and conduct of the hearing shall be under the provisions of ORS
 43 chapter 183 pertaining to contested cases. The hearing shall be conducted in the area where the
 44 right is located unless the parties and the persons who file the protest under this section stipulate
 45 otherwise.

1 (2) The petition required under subsection (1) of this section shall be submitted on or before July
 2 1, 1994, or before June 30, 2010, for a district notifying the department under ORS 541.327 (4), and
 3 shall include:

4 (a) The name of the district and the certificate number of each water right contained in the
 5 petition.

6 (b) The names of all users within the district whose lands are included in the petition.

7 (c) A general description of the district boundaries.

8 (d) A general description of the users' land and all water rights per each parcel affected by the
 9 petition and the map. If the water right is on a tract of land of five acres or less, a notation of the
 10 acres of water right on the assessor's tax map shall be sufficient for identification of the place of
 11 use and the extent of use.

12 (e) A description of the use [*which*] **that** is proposed to be made of the water on each parcel.

13 (f) An affirmation by the petitioner that the map and petition are accurate to the best of the
 14 petitioner's knowledge.

15 (3) A petition submitted under this section shall contain no more acres of land than the least
 16 of the following:

17 (a) The number of acres assessed by the district as of July 1, 1989;

18 (b) The number of acres assessed by the district as of July 1, 1993; or

19 (c) If a district notifies the department under ORS 541.327 (4), the number of acres assessed by
 20 the district as of December 31, 2003.

21 (4) Before submitting a petition under subsection (2) of this section, the district shall send a
 22 notice to the user of every parcel whose right of record is to be altered, as evidenced by the
 23 district's records. This notice shall be sent to the last-known address for the user with a return re-
 24 ceipt requested. The notice shall include the number of acre-feet of water or its equivalent, for
 25 which the user is being assessed, a general description or tax lot of the land to which the water is
 26 assigned, a description of the use and a request for confirmation that the information in the notice
 27 is correct. Thirty days after the notice is mailed, the district shall prepare a petition and map as
 28 described in subsections (1) and (2) of this section. Payment for water by the user or the user's
 29 predecessor for a period of five years before the petition shall create a rebuttable presumption that
 30 the number of acres billed and paid by the user or the user's predecessor is equal to the user's water
 31 right.

32 (5) Within 30 days after the commission issues a proposed order regarding the petition, the dis-
 33 trict shall send notice to the users of the district whose right of record is to be altered by the
 34 proposed order. This notice shall be sent to the last-known address of the user with a return receipt
 35 requested. The notice shall include the number of acres of land, or its equivalent, for which the user
 36 is being assessed, a general description or tax lot number of the land to which the water is assigned
 37 and a description of the use. In addition to the notice of the proposed order that the district sends
 38 to the users, the district shall publish at the same time notice in a newspaper having general cir-
 39 culation in the area in which the water rights are located [*for a period of at least three weeks. Not*
 40 *less than one publication in each week shall be made*]. The notice shall state:

41 (a) The number of acres of water right that each parcel shall receive and the associated priority
 42 dates;

43 (b) That the proposed map and order are available for inspection at the office of the district
 44 during normal business hours for a period of 60 days from the date of [*first*] **the** publication;

45 (c) That not less than 60 days after the date of [*first*] **the** publication, the commission shall ap-

1 prove the petition and map and issue a final order unless a protest is filed or the petition does not
 2 meet the requirements of subsections (1) and (2) of this section; and

3 (d) That the user has the right to protest the proposed order and map as described in ORS
 4 541.331.

5 (6) If the commission returns a petition or map to a district for correction, the commission may
 6 prescribe a deadline for the petitioner to provide additional information or correct the petition or
 7 map. If the petitioner fails to meet the deadline prescribed by the commission, the commission may
 8 deny the petition.

9 **SECTION 12.** ORS 541.331 is amended to read:

10 541.331. (1) Any user may file with the Water Resources Department, within 60 days after the
 11 date of [first] publication, under ORS 541.329, a protest against a proposed order approving the pe-
 12 tition. [Whenever] **If** a timely protest is filed or in the opinion of the Water Resources Director a
 13 hearing is necessary to determine whether the district has met the requirements of ORS 541.325 to
 14 541.333 or the proposed changes described in the proposed order would result in injury to existing
 15 water rights, the department shall hold a hearing on the matter. The hearing shall be conducted
 16 according to the provisions of ORS chapter 183 applicable to contested cases. The hearing shall be
 17 held in the area where the rights are located unless the parties and the persons who filed the pro-
 18 test under this section stipulate otherwise.

19 (2) If after examination or hearing, the department finds that the district has met the require-
 20 ments of ORS 541.325 to 541.331 and that the changes described in the proposed order would not
 21 result in injury to existing water rights, the department shall issue a final order approving the pe-
 22 tition and map as described in the proposed order. If a water right certificate for the water right
 23 has been issued previously, the department shall cancel the previous certificate and issue a new
 24 certificate that conforms to the final order and map and retains the original priority date.

25 (3) A certificate issued under this section shall have the evidentiary effect provided for in ORS
 26 537.270 except when the right to appropriate water described in the certificate is abandoned after
 27 the certificate is amended or issued.

28 (4) The department may approve for inclusion in a new certificate under ORS 541.329 and this
 29 section only land [which] **that**, on July 1, 1993, or, if a district notifies the department under ORS
 30 541.327 (4), on December 31, 2003, is:

31 (a) Land within the legal boundaries of the district as those boundaries were originally de-
 32 scribed or as they may have been changed by legally prescribed inclusion or exclusion proceedings.

33 (b) Land for which inclusion in the district has been requested previously as prescribed by law.

34 (c) Land on which a previously perfected water right has been applied beneficially and for which
 35 the user has been charged or assessed by the district in at least one of the last five years and for
 36 which the user is currently being charged or assessed.

37 **SECTION 13.** ORS 543.220 is amended to read:

38 543.220. (1) [Whenever] **If** an application is made for a preliminary permit, [and] after said ap-
 39 plication has been referred to hearing[,] the Water Resources Commission shall give written notice
 40 of the filing of the application to:

41 (a) Any municipality or other person or corporation [which] **that**, in the judgment of the com-
 42 mission, is likely to be interested in or affected by the proposed project; and

43 (b) The owner of any land that is:

44 (A) Adjacent to any portion of the stream in which the quantity of water will be decreased by
 45 the project; or

1 (B) Adjacent to the site of the proposed project.

2 (2) The commission shall also publish notice of the application [*once each week for at least four*
3 *successive weeks and for such further time, if any, as the commission shall determine,*] in a newspaper
4 of general circulation in each county in which the project covered by the application is located.

5 (3) No application for the appropriation or use of water for the development of 1,000 theoretical
6 horsepower or more shall be granted until at least six months after the application for a preliminary
7 permit has been filed.

8 **SECTION 14. (1) The amendments to ORS 536.340 and 536.410 by sections 1 and 3 of this**
9 **2011 Act apply to hearings that the Water Resources Commission holds 30 or more days after**
10 **the effective date of this 2011 Act.**

11 **(2) The amendments to ORS 536.380 by section 2 of this 2011 Act apply to proposed ex-**
12 **ercises of powers, duties or privileges for which a state agency or public corporation files**
13 **notification with the Water Resources Commission on or after the effective date of this 2011**
14 **Act.**

15 **(3) The amendments to ORS 537.130, 537.145, 537.805, 540.520, 540.535 and 543.220 by**
16 **sections 4, 5, 8, 9, 10 and 13 of this 2011 Act apply to applications filed on or after the effec-**
17 **tive date of this 2011 Act.**

18 **(4) The amendments to ORS 537.252 by section 6 of this 2011 Act apply to proposed**
19 **changes for which a district gives the Water Resources Department notice on or after the**
20 **effective date of this 2011 Act.**

21 **(5) The amendments to ORS 537.670 by section 7 of this 2011 Act apply to notices of intent**
22 **for determinations that the Water Resources Director makes 30 or more days after the ef-**
23 **fective date of this 2011 Act.**

24 **(6) The amendments to ORS 541.329 and 541.331 by sections 11 and 12 of this 2011 Act**
25 **apply to proposed orders that the Water Resources Commission issues 30 or more days after**
26 **the effective date of this 2011 Act.**

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