

# Senate Bill 848

Sponsored by Senator NELSON, Representatives JENSON, G SMITH

## 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**.

Allows temporary opportunity for qualifying district to file petition for issuance of new water right certificate applicable to lands within district. Reconciles existing statutory inconsistency regarding entity acting on district petition. Repeals obsolete provisions of law regarding filing of petition by nondistrict water right holder.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to water districts; creating new provisions; amending ORS 536.050, 536.900, 540.520, 541.325,  
3 541.329 and 541.331; repealing ORS 541.327 and 541.333; and declaring an emergency.

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

5 **SECTION 1.** ORS 541.329 is amended to read:

6 541.329. (1)(a) [*Pursuant to the requirements of subsection (2) of this section,*] A district may pe-  
7 tition the Water Resources Commission for approval and acceptance of a district map indicating the  
8 location and use of the water rights within the district or any part [*thereof.*] **of the district. A**  
9 **district acting under this section must give the commission notice on or before July 1, 2011,**  
10 **that the district intends to file a petition. The district must file the petition no later than**  
11 **June 30, 2018.**

12 (b)(A) **Except as provided in this paragraph, a district may file a petition under this**  
13 **section on or after the effective date of this 2011 Act only if the commission accepted and**  
14 **approved a petition that the district filed on or before July 1, 1994, and the district has ac-**  
15 **quired additional water rights since that acceptance and approval.**

16 (B) **The Walla Walla River Irrigation District, or a successor to the district, may file a**  
17 **petition under this section on or after the effective date of this 2011 Act only if the district**  
18 **has acquired additional water rights since July 1, 2004.**

19 (C) **A petition filed by the Hermiston Irrigation District, or any successor to that district,**  
20 **may include lands irrigated under any water right held by the district.**

21 (2) **A petition filed on or after the effective date of this 2011 Act by a district described**  
22 **in subsection (1)(b)(A) or (B) of this section may not include a greater number of acres than**  
23 **the number of acres described in an accepted and approved petition that the district filed on**  
24 **or before July 1, 2004. A map submitted on or after the effective date of this 2011 Act by a**  
25 **district described in subsection (1)(b)(C) of this section may not include a greater number**  
26 **of acres than the number of acres assessed by the district as of December 31, 2011.**

27 (3) **The petition and map [shall] submitted under this section must** be in a form satisfactory  
28 to the commission and [*shall*] be certified by the district rather than a certified water right exam-  
29 iner. [*For a district that notifies the Water Resources Department under ORS 541.327 (4),*] The map  
30 must be submitted in an electronic format meeting the standards set by the **Water Resources De-**

**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 partment. The petition and map may not expand a water right of the district or its users beyond the  
2 total right of record of the district.

3 (4) If the district has met the requirements of ORS 541.325 to 541.331 and after the opportunity  
4 for hearing under ORS 541.331, the commission shall instruct the [director] **department** to issue a  
5 new certificate to the district listing the requested locations and uses and retaining the original  
6 priority date. **The department shall include in the new certificate all water rights and lands**  
7 **identified in the petition and the water rights and lands that were identified in an accepted**  
8 **and approved petition filed by the district prior to the effective date of this 2011 Act.** If the  
9 commission denies the petition, the commission shall **instruct the department to** hold a hearing  
10 on the denial. Notice and conduct of the hearing shall be under the provisions of ORS chapter 183  
11 pertaining to contested cases. The hearing shall be conducted in the area where the right is located  
12 unless the parties and the persons who file the protest under this section stipulate otherwise.

13 [(2) *The petition required under subsection (1) of this section shall be submitted on or before July*  
14 *1, 1994, or before June 30, 2010, for a district notifying the department under ORS 541.327 (4), and*  
15 *shall include:*]

16 (5) **A petition filed under this section shall include:**

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

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

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

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

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

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

28 [(3) *A petition submitted under this section shall contain no more acres of land than the least of*  
29 *the following:*]

30 [(a) *The number of acres assessed by the district as of July 1, 1989;*]

31 [(b) *The number of acres assessed by the district as of July 1, 1993; or*]

32 [(c) *If a district notifies the department under ORS 541.327 (4), the number of acres assessed by*  
33 *the district as of December 31, 2003.*]

34 [(4)] (6) Before submitting a petition under [subsection (2) of] this section, the district shall send  
35 a notice to the user of every parcel whose right of record is to be altered, as evidenced by the  
36 district's records. This notice shall be sent to the last-known address for the user with a return re-  
37 ceipt requested. The notice shall include the number of acre-feet of water or its equivalent[,] for  
38 which the user is being assessed, a general description or tax lot **number** of the land to which the  
39 water is assigned, a description of the use and a request for confirmation that the information in the  
40 notice is correct. Thirty days after the notice is mailed, the district shall prepare a petition and map  
41 as described in [subsections (1) and (2) of] this section. Payment for water by the user or the user's  
42 predecessor for a period of five years before the petition shall create a rebuttable presumption that  
43 the number of acres billed and paid by the user or the user's predecessor is equal to the user's water  
44 right.

45 [(5)] (7) Within 30 days after the commission issues a proposed order regarding the petition, the

1 district shall send notice to the users of the district whose right of record is to be altered by the  
 2 proposed order. This notice shall be sent to the last-known address of the user with a return receipt  
 3 requested. The notice shall include the number of acres of land[,] or its equivalent[,] for which the  
 4 user is being assessed, a general description or tax lot number of the land to which the water is  
 5 assigned and a description of the use. In addition to the notice of the proposed order that the dis-  
 6 trict sends to the users, the district shall publish at the same time notice in a newspaper having  
 7 general circulation in the area in which the water rights are located for a period of at least three  
 8 weeks. *[Not less than one publication in each week shall be made.]* **At least one publication must**  
 9 **occur in each of the three weeks.** The notice shall state:

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

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

14 (c) That not less than 60 days after the date of first publication, the commission shall approve  
 15 the petition and map and issue a final order unless a protest is filed or the petition does not meet  
 16 the requirements of *[subsections (1) and (2) of]* this section; and

17 (d) That the user has the right to protest the proposed order and map as described in ORS  
 18 541.331.

19 *[(6)]* **(8)** If the commission returns a petition or map to a district for correction, the commission  
 20 may prescribe a deadline for the petitioner to provide additional information or correct the petition  
 21 or map. If the petitioner fails to meet the deadline prescribed by the commission, the commission  
 22 may deny the petition.

23 **SECTION 2.** ORS 541.331 is amended to read:

24 541.331. (1) Any user may file with the Water Resources Department, within 60 days after the  
 25 date of first publication, under ORS 541.329, a protest against a proposed order approving the peti-  
 26 tion. **The department shall hold a hearing** whenever a timely protest is filed or in the opinion of  
 27 the Water Resources *[Director]* **Commission** a hearing is necessary to determine whether the dis-  
 28 trict has met the requirements of ORS 541.325 to 541.333 or the proposed changes described in the  
 29 proposed order would result in injury to existing water rights~~*[, the department shall hold a hearing*~~  
 30 *on the matter]*. The hearing shall be conducted according to the provisions of ORS chapter 183 ap-  
 31 plicable to contested cases. The hearing shall be held in the area where the rights are located unless  
 32 the parties and the persons who filed the protest under this section stipulate otherwise.

33 (2) If after examination or hearing, the department finds that the district has met the require-  
 34 ments of ORS 541.325 to 541.331 and that the changes described in the proposed order would not  
 35 result in injury to existing water rights, the department shall *[issue a final]* **prepare a final** order  
 36 approving the petition and map as described in the proposed order. **The department shall submit**  
 37 **the final order to the commission for approval.** If the commission issues a final order ap-  
 38 proving a petition, and a water right certificate for the water right has been issued previously, the  
 39 department shall cancel the previous certificate and issue a new certificate that conforms to the  
 40 final order and map and retains the original priority date.

41 (3) A certificate issued under this section shall have the evidentiary effect provided for in ORS  
 42 537.270 except when the right to appropriate water described in the certificate is abandoned after  
 43 the certificate is amended or issued.

44 (4) The *[department]* **commission** may approve for inclusion in a new certificate under ORS  
 45 541.329 and this section only land *[which, on July 1, 1993, or, if a district notifies the department*

1 *under ORS 541.327 (4), on December 31, 2003,] that as of the date on which the petition is filed*  
 2 *is:*

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

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

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

9 **SECTION 3.** ORS 536.050 is amended to read:

10 536.050. (1) The Water Resources Department may collect the following fees in advance:

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

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

14 (i) A base fee of \$700 for an appropriation of water through a single use, point of diversion or  
 15 point of appropriation;

16 (ii) \$250 for the first second-foot or fraction thereof appropriated under the permit;

17 (iii) \$250 for each additional second-foot or fraction thereof appropriated under the permit;

18 (iv) \$250 for each additional use, point of diversion or point of appropriation included in the  
 19 application;

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

22 (vi) If appropriating ground water, in addition to any other fees, \$300 for each application filed.

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

24 (i) A base fee of \$700;

25 (ii) \$25 for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1 for each additional  
 26 acre-foot or fraction thereof; and

27 (iii) \$100 for each additional storage location.

28 (C) To exclusively appropriate stored water:

29 (i) A base fee of \$400; and

30 (ii) \$25 for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1 for each additional  
 31 acre-foot or fraction thereof.

32 (b) For a permit issued under ORS 537.147, 537.211, 537.409 or 537.625 to appropriate or store  
 33 water:

34 (A) A base fee of \$400 for recording the permit; and

35 (B) An additional fee of \$500 if the permit is issued pursuant to a final order that contains  
 36 provisions requested by the applicant for mitigating impacts to the proposed water source.

37 (c) For filing and recording the assignment or partial assignment of a water right application,  
 38 permit or license under ORS 537.220 or 537.635, \$75.

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

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

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

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

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

45 (A) A base fee of \$900 for a change to a single water right or permit;

- 1 (B) \$700 for each additional type of change requested;
- 2 (C) For a request for a change in place of use or type of use or for a water exchange under ORS  
3 540.533, \$250 for each second-foot or fraction thereof requested beyond the first second-foot;
- 4 (D) \$400 for each additional water right or permit included in the application; and
- 5 (E) An additional fee of \$300 per application, if the application is for an additional point of ap-  
6 propriation, a change in a point of appropriation or a change from surface water to ground water  
7 or for substitution as described in ORS 540.524.
- 8 (i) For examining an application for a temporary change in place of use under ORS 540.523, for  
9 a temporary transfer under ORS 540.585 or for a temporary change in place of use, a change in the  
10 point of diversion to allow for the appropriation of ground water or a change of a primary right to  
11 a supplemental right under ORS 540.570, a base fee of \$600 for the first water right or permit, plus  
12 \$200 for each additional water right or permit included in the application and:
- 13 (A) For nonirrigation uses, \$150 for each second-foot or fraction thereof requested beyond the  
14 first second-foot; or
- 15 (B) For irrigation uses, \$2 per acre of land irrigated or, if the application and required map are  
16 submitted to the department in a department-approved digital format, 50 cents per acre of land ir-  
17 rigated.
- 18 (j) For submitting a protest to the department:
- 19 (A) \$600 if the protest is by a nonapplicant; and
- 20 (B) \$300 if the protest is by an applicant.
- 21 (k) For filing an application for extension of time within which irrigation or other works shall  
22 be completed or a water right perfected, \$500.
- 23 (L) For a limited license under ORS 537.143 or 537.534 (2), the fee established by rule by the  
24 Water Resources Commission.
- 25 (m) For filing, examining and certifying a petition under ORS 541.329, \$300 plus 10 cents per  
26 acre of water involved in the application. For purposes of computing this fee, when any acreage  
27 within a quarter quarter of a section is involved, the 10 cents per acre shall apply to all acres in  
28 that quarter quarter of a section. Notwithstanding the fee amount established in this paragraph, a  
29 district *[notifying the department under ORS 541.327 (4)]* **described in ORS 541.329 (1)(b)(B) or (C)**  
30 shall pay the actual cost of filing, examining and certifying the petition.
- 31 (n) For requesting standing under ORS 537.153, 537.621 or 543A.120, \$150.
- 32 (o) For participating in a contested case proceeding under ORS 537.170, 537.622 or 543A.130,  
33 \$350.
- 34 (p) Except for an applicant, for obtaining a copy of both a proposed final order and a final order  
35 for a water right application under ORS 537.140 to 537.252, 537.505 to 537.795 or 543A.005 to  
36 543A.300 or an extension issued under ORS 537.230, 537.248 or 537.630, \$20.
- 37 (q) For examining an application to store water under ORS 537.409:
- 38 (A) A base fee of \$300; and
- 39 (B) \$25 for each acre-foot or fraction thereof.
- 40 (r) For submitting a notice of intent under ORS 543A.030 or 543A.075, the amount established  
41 by the Water Resources Director under ORS 543A.410.
- 42 (s) For examining an application for a substitution made under ORS 540.524:
- 43 (A) A base fee of \$630 for the first well substitution; and
- 44 (B) A fee of \$300 for each additional well substitution.
- 45 (t) For examining an application for an allocation of conserved water under ORS 537.455 to

- 1 537.500:
- 2 (A) A base fee of \$850 for the first water right that is part of the allocation; and
- 3 (B) An additional fee of \$300 for each water right that is part of the allocation beyond the first
- 4 water right.
- 5 (u) For submitting a water management and conservation plan pursuant to rules of the com-
- 6 mission:
- 7 (A) \$400, if the plan is submitted by an agricultural water supplier;
- 8 (B) \$800, if the plan is submitted by a municipal water supplier serving a population of 1,000 or
- 9 fewer persons; or
- 10 (C) \$1,600, if the plan is submitted by a municipal water supplier serving a population of more
- 11 than 1,000 persons.
- 12 (v) For examining a new application for an in-stream water right lease under ORS 537.348:
- 13 (A) \$400 for an application for a lease with four or more landowners or four or more water
- 14 rights; or
- 15 (B) \$250 for all other applications.
- 16 (w) For examining an application for an in-stream water right lease renewal, \$100.
- 17 (x) For submitting a claim of beneficial use under a permit having a priority date of July 9, 1987,
- 18 or later, \$150.
- 19 (y) For submitting a request no later than 60 days after cancellation of a permit under ORS
- 20 537.260 to reinstate the permit, \$400.
- 21 (z) For submitting a request for a basin program exception under ORS 536.295, \$500.
- 22 (2)(a) The department may charge a dam owner an annual fee based upon the dam's hazard
- 23 rating as determined by the department. The fees the department may charge the dam owner are:
- 24 (A) \$75 for a dam with a low hazard rating.
- 25 (B) \$150 for a dam with a significant hazard rating.
- 26 (C) \$500 for a dam with a high hazard rating.
- 27 (D) If the dam owner fails to pay an annual fee on or before six months after the billing date,
- 28 a late fee of \$100.
- 29 (b) If a dam owner fails to pay an annual fee or a late fee charged by the department, the de-
- 30 partment may, after giving the dam owner notice by certified mail, place a lien on the real property
- 31 where the dam is located for the fees owed by the dam owner.
- 32 (3) Notwithstanding the fees established under subsection (1) of this section, the commission may
- 33 establish lower examination and permit fees by rule for:
- 34 (a) The right to appropriate water for a storage project of five acre-feet or less; or
- 35 (b) The right to appropriate water for the purpose of allowing the applicant to water livestock
- 36 outside of a riparian area, as that term is defined in ORS 541.351.
- 37 (4)(a) The director may refund all or part of a fee paid to the department under this section if
- 38 the director determines that a refund of the fee is appropriate in the interests of fairness to the
- 39 public or necessary to correct an error of the department.
- 40 (b) The director may refund all or part of the protest fee described in subsection (1)(j) of this
- 41 section to the legal owner or occupant who filed a protest under ORS 540.641 if an order of the
- 42 Water Resources Commission establishes that all or part of a water right has not been canceled or
- 43 modified under ORS 540.610 to 540.650.
- 44 (5) The director may waive all or part of a fee for a change to a water right permit under ORS
- 45 537.211 (4), a change to a water right subject to transfer under ORS 540.520 or 540.523 or an allo-

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

2 (a) Made pursuant to ORS 537.348;

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

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

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

9 (7) All moneys received under this section, less any amounts refunded under subsection (4) of  
10 this section, shall be deposited in the Water Resources Department Water Right Operating Fund.

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

14 **SECTION 4.** ORS 536.050, as amended by section 12, chapter 819, Oregon Laws 2009, is  
15 amended to read:

16 536.050. (1) The Water Resources Department may collect the following fees in advance:

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

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

20 (i) A base fee of \$500 for an appropriation of water through a single use, point of diversion or  
21 point of appropriation;

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

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

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

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

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

29 (i) A base fee of \$500; and

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

32 (C) To exclusively appropriate stored water:

33 (i) A base fee of \$250; and

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

36 (b) For recording a permit to appropriate or store water, \$300.

37 (c) For filing and recording the assignment or partial assignment of a water right application,  
38 permit or license under ORS 537.220 or 537.635, \$50.

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

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

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

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

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

45 (A) A base fee of \$400 for a change to a single water right or permit;

- 1 (B) \$400 for each additional type of change requested;
- 2 (C) For a request for a change in place of use or type of use or for a water exchange under ORS  
3 540.533, \$200 for each second-foot or fraction thereof requested beyond the first second-foot; and
- 4 (D) \$200 for each additional water right or permit included in the application.
- 5 (i) For examining an application for a temporary change in place of use under ORS 540.523, for  
6 a temporary transfer under ORS 540.585 or for a temporary change in place of use, a change in the  
7 point of diversion to allow for the appropriation of ground water or a change of a primary right to  
8 a supplemental right under ORS 540.570, a base fee of \$200 for the first water right or permit, plus  
9 \$50 for each additional water right or permit included in the application and:
- 10 (A) For nonirrigation uses, \$80 for each second-foot or fraction thereof requested beyond the  
11 first second-foot; or
- 12 (B) For irrigation uses, \$1 per acre of land irrigated or, if the application and required map are  
13 submitted to the department in a department-approved digital format, 25 cents per acre of land ir-  
14 rigated.
- 15 (j) For submitting a protest to the department, \$350.
- 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, \$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, \$250 plus 10 cents per  
21 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)]* **described in ORS 541.329 (1)(b)(B) or (C)**  
25 shall pay the actual cost of filing, examining and certifying the petition.
- 26 (n) For requesting standing under ORS 537.153, 537.621 or 543A.120, \$100.
- 27 (o) For participating in a contested case proceeding under ORS 537.170, 537.622 or 543A.130,  
28 \$250.
- 29 (p) Except for an applicant, for obtaining a copy of both a proposed final order and a final order  
30 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, \$10.
- 32 (q) For examining an application to store water under ORS 537.409:
- 33 (A) A base fee of \$80; and
- 34 (B) \$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 (t) For examining an application for an allocation of conserved water under ORS 537.455 to  
39 537.500, \$700.
- 40 (u) For submitting a water management and conservation plan pursuant to rules of the com-  
41 mission:
- 42 (A) \$250, if the plan is submitted by an agricultural water supplier;
- 43 (B) \$500, if the plan is submitted by a municipal water supplier serving a population of 1,000 or  
44 fewer persons; or
- 45 (C) \$1,000, if the plan is submitted by a municipal water supplier serving a population of more



1 than 1,000 persons.

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

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

5 (B) \$100 for all other applications.

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

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

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

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

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

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

19 (4) The director may waive all or part of a fee for a change to a water right permit under ORS  
20 537.211 (4), a change to a water right subject to transfer under ORS 540.520 or 540.523 or an allo-  
21 cation of conserved water under ORS 537.470, if the change or allocation of conserved water is:

22 (a) Made pursuant to ORS 537.348;

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

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

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

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

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

34 **SECTION 5.** ORS 536.900 is amended to read:

35 536.900. (1) In addition to any other liability or penalty provided by law, the Water Resources  
36 Commission may impose a civil penalty on a person for any of the following:

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

39 (b) Violation of ORS 537.130 or 537.535.

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

41 (d) Violation of any rule or order of the Water Resources Commission that pertains to well  
42 maintenance.

43 (e) Violation of ORS 540.045, 540.145, 540.210, 540.310, 540.320, 540.330, 540.340, 540.435, 540.440,  
44 540.570 (5), 540.710, 540.720 and 540.730 or rules adopted under ORS 540.145.

45 (2) A civil penalty may be imposed under this section for each day of violation of ORS 537.130,

1 537.535, 540.045, 540.310, 540.330, 540.570 (5), 540.710, 540.720 or 540.730.

2 (3) In the event the petitioner knowingly misrepresents the map and petition required in ORS  
3 541.329, the commission may assess a penalty of up to \$1,000 based upon guidelines to be established  
4 by the commission. In addition, the petition and map shall be amended to correct the error at the  
5 petitioner's cost. Affected users shall be given notice as provided in ORS 541.329 [(5)] (7).

6 (4) A civil penalty may not be imposed until the commission prescribes a reasonable time to  
7 eliminate the violation. The commission shall notify the violator of the time allowed to correct a  
8 violation within five days after the commission first becomes aware of the violation.

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

12 **SECTION 6.** ORS 540.520 is amended to read:

13 540.520. (1) Except when [*the application is made under ORS 541.327 or when*] an application for  
14 a temporary transfer is made under ORS 540.523, whenever the holder of a water use subject to  
15 transfer for irrigation, domestic use, manufacturing purposes, or other use, for any reason desires  
16 to change the place of use, the point of diversion, or the use made of the water, an application to  
17 make such change, as the case may be, shall be filed with the Water Resources Department.

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

19 (a) The name of the owner;

20 (b) The previous use of the water;

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

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

23 (e) The use which is proposed to be made of the water;

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

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

28 (3) If the application required under subsection (1) of this section is necessary to allow a change  
29 in a water right pursuant to ORS 537.348, is necessary to complete a project funded under ORS  
30 541.375, or is approved by the State Department of Fish and Wildlife as a change that will result in  
31 a net benefit to fish and wildlife habitat, the department, at the discretion of the Water Resources  
32 Director, may waive or assist the applicant in satisfying the requirements of subsection (2)(c) and  
33 (d) of this section. The assistance provided by the department may include, but need not be limited  
34 to, development of an application map.

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

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

1 weekly notice published by the department.

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

5 (7) Whenever a timely protest is filed, or in the opinion of the Water Resources Director a  
6 hearing is necessary to determine whether the proposed changes as described by the application  
7 would result in injury to existing water rights, the department shall hold a hearing on the matter.  
8 Notice and conduct of the hearing shall be under the provisions of ORS chapter 183, pertaining to  
9 contested cases, and shall be held in the area where the rights are located unless all parties and  
10 persons who filed a protest under this subsection stipulate otherwise.

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

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

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

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

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

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

25 (B) The water right certificate number;

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

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

29 **SECTION 7.** ORS 541.325 is amended to read:

30 541.325. As used in **this section and** ORS 541.327 to 541.333:

31 (1) "District" means any district or corporation organized under ORS chapter 545, 547, 552, 553  
32 or 554 or any corporation, cooperative, company or other association formed before 1917 for the  
33 purpose of distributing water for irrigation purposes.

34 [(2) "Owned" or "controlled" means ownership in fee, purchase on a land sale contract, option to  
35 purchase or lease.]

36 [(3)] (2) "User" means an owner of land with an appurtenant water right that is subject to as-  
37 sessment by a district and that would be altered by the petition and map filed under ORS 541.329.

38 **SECTION 8. ORS 541.327 and 541.333 are repealed.**

39 **SECTION 9. The amendments to ORS 541.329 and 541.331 by sections 1 and 2 of this 2011**  
40 **Act and the repeal of ORS 541.327 and 541.333 by section 8 of this 2011 Act do not affect the**  
41 **validity of any certificate issued under ORS 541.327, 541.329, 541.331 or 541.333 before the ef-**  
42 **fective date of this 2011 Act.**

43 **SECTION 10. This 2011 Act being necessary for the immediate preservation of the public**  
44 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**  
45 **on its passage.**

